

Table of Contents

DEP and Beazer – Final Consent Order and Agreement

	<u>Page #</u>
FINDINGS	1
The Kelly Farm Disposal Area	4
The Bear Creek Area Chemical Site	5
The Department's Interim Response	7
Proposed Further Responses	8
Other Related Administrative and Judicial Proceedings	9
Beazer's Submissions Of Final Engineering Designs And Work Plans	10
 ORDER	 11
Authority	12
Findings	12
Definitions	12
Payment of Response Costs	15
Indspec Plant	15
Certification by Beazer	17
Access and Use Restrictions	17
Stipulated Penalties	18
Liability	20
Dispute Resolution	20
Indemnification and Insurance	22
Contribution	23
Additional Acknowledgments	25
Beazer's Covenants Not to Sue	26
Existing Litigation	26
Waiver of Other Claims by Beazer	27
Department's Covenants Not to Sue	28
Relief from Liability under the Land Recycling Act	29
Department's Reservation of Rights	30
Existing Obligations Unaffected	31
Remedies for Breach	32
Correspondence with the Department	32
Correspondence with Beazer	32
Exhibits	33
Attorneys' Fees	33
Entire Agreement	33
Modification	33
Titles	34
Severability	34
Effect on Third Parties	34
Opportunity for Public Comment	34
Effective Date	35

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

BEAR CREEK AREA	:	Land Recycling Act
CHEMICAL SITE	:	Clean Streams Law
Petrolia, Fairview, Karns City, and	:	Pennsylvania Safe Drinking Water Act
Bruin Boroughs; Fairview, Parker,	:	Dam Safety and Encroachments Act
Washington, Concord Townships,	:	Hazardous Sites Cleanup Act, CERCLA
Butler County and Perry Township,	:	Solid Waste Management Act
Armstrong County	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("Agreement") is entered into this 5TH day of May, 2003, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Beazer East, Inc. ("Beazer").

The Department has found and determined the following:

FINDINGS

A. The Department is the agency with the duty and authority to administer and implement the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, 35 P.S. §§6026.101-6026.908 ("Land Recycling Act"); and to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§691.1-691.1001 ("Clean Streams Law"); the Pennsylvania Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, *as amended*, 35 P.S. §§721.1-721.17 ("Safe Drinking Water Act"); the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. §§693.1-693.27 ("Dam Safety Act"); the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§6020.101-6020.1305 ("HSCA"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, *as amended*, 42 U.S.C. §§9601-9675 ("CERCLA"); the federal Water Pollution Control

Act of 1972, *as amended*, 33 U.S.C. §§1251-2909 ("Clean Water Act"); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§6018.101-6018.1003 ("Solid Waste Management Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Regulations").

B. Beazer is a Delaware corporation registered to do business in Pennsylvania and is located at Beazer East, Inc., c/o Three Rivers Management, Inc., One Oxford Centre, Suite 3000, Pittsburgh, Pennsylvania 15219-6401.

C. Beazer was formerly known as Koppers Company, Inc. ("Koppers"). From approximately 1940 until 1988, Koppers owned a plant in the Borough of Petrolia, Butler County, Pennsylvania, where Koppers' manufacturing processes generated a variety of chemicals, including, but not limited to, resorcinol, trihydroxydiphenyl ("THD"), meta-benzene disulfonic acid ("m-BDSA"), para-phenol sulfonic acid ("p-PSA"), and benzene sulfonic acid ("BSA"). For the purposes of this Agreement, m-BDSA, p-PSA, and BSA are collectively referred to as "Sulfonates."

D. Crompton Corporation is the successor to Witco Corporation, L.L. Sonneborne and Sons, and Daugherty Refining ("Crompton"). Beginning in the early 1900's and continuing to the present, Crompton has owned and operated a plant in the Borough of Petrolia, Butler County, Pennsylvania, where Crompton's manufacturing processes resulted in the generation of a variety of chemicals, including, but not limited to, calcium petronate, petroleum, and Sulfonates.

E. Penreco is the successor to the Pennsylvania Refining Company ("Penreco"). Beginning in 1878, Penreco and its predecessors have owned and operated a plant in Karns City, Butler County, Pennsylvania, where manufacturing processes resulted in the generation of a variety of chemicals, including, but not limited to white oils, petroleum, and Sulfonates.

F. The manufacturing plants owned by Koppers, Crompton, and Penreco will collectively be referred to as the "Plant Sites" and the chemical wastes generated at the Plant Sites, including but not limited to resorcinol, Sulfonates, THD, and petroleum will be referred to as the "Industrial Wastes."

G. Prior to 1979, Koppers, Crompton, and Penreco contracted with third parties to dispose of Industrial Wastes from each of the Plant Sites. In particular, Francis C. Spitzer, Herman Craig, and James D. Wade ("Waste Contractors"), among others, were retained by Koppers and/or Crompton to transport and dispose of Industrial Wastes.

H. The Waste Contractors disposed of Industrial Wastes at properties in northeastern Butler County and northwestern Armstrong County, Pennsylvania. The locations of these properties are shown on Exhibit A, which is attached hereto and incorporated herein.

I. The Waste Contractors disposed of Industrial Wastes in areas that included locations formerly mined for coal. The Industrial Wastes were placed directly on the land and in direct contact with the soil, surface water, and groundwater.

J. In addition to the off-site disposal activities of the Waste Contractors, Koppers disposed of Industrial Wastes containing resorcinol and Sulfonates on Koppers' plant property in Petrolia in direct contact with soil, surface water, and groundwater.

K. In addition to the off-site disposal activities of the Waste Contractors, Crompton and Penreco disposed of Industrial Wastes on their respective Plant Sites in Butler County in direct contact with soil, surface water, and groundwater.

L. In 1980, Koppers submitted a response to the Waste Disposal Site Survey of 1979 developed by a subcommittee of the United States Congress chaired by Representative Robert

Eckhardt. This report identified Koppers' historic waste disposal practices, the suspected locations of Disposal Areas, the type of wastes reportedly disposed, and an estimated volume disposed.

M. In 1988, Indspec Chemical Corporation ("Indspec") bought Koppers' operations and the plant property in Petrolia from Beazer, with Beazer retaining ownership of certain parcels at the plant property where Industrial Wastes were disposed. Beazer also retained certain liabilities associated with disposal activities and/or releases of Industrial Wastes that occurred prior to 1988. The property retained by Beazer as well as the property acquired by Indspec is hereinafter referred to as the "Indspec Plant."

N. Pursuant to an August 1987 Consent Order and Agreement between the Department and Koppers, attached hereto and incorporated herein as Exhibit B, Beazer has been investigating the nature and extent of groundwater and surface water contamination resulting from Koppers' operations and disposal practices at the Indspec Plant. Beazer has submitted reports of Beazer's investigations to the Department indicating that resorcinol, Sulfonates, THD, and other hazardous substances and contaminants are present in groundwater and surface water at the Indspec Plant.

The Kelly Farm Disposal Area

O. Since 1991, Beazer has been investigating the nature and extent of contamination resulting from the disposal of Industrial Wastes by the Waste Contractors at a Disposal Area located in Fairview Township, Butler County, and currently owned by Dennis Kelly ("Kelly Farm"). Beazer and Crompton have submitted reports of their investigations to the Department indicating that resorcinol, Sulfonates, and other hazardous substances and contaminants are present in the waste, surface water, and/or groundwater at Kelly Farm.

P. In December 2001, investigations by Beazer and/or the Department showed that drinking water in the area near Kelly Farm was impacted by the hazardous substances and/or

contaminants present in the Industrial Wastes disposed at Kelly Farm. As a result, Beazer has supplied bottled water to residents in the area near Kelly Farm.

The Bear Creek Area Chemical Site

Q. The Department and the United States Environmental Protection Agency have previously overseen the investigation and closure of three areas known as the Craig Farm NPL Site, the Bruin Lagoon NPL Site, and the Shaler/JTC HSCA Site.

R. On or about March 8, 2002, the Department received information indicating that the Borough of Petrolia's public drinking water supply was impacted by hazardous substances and contaminants found in the Industrial Wastes.

S. On or about March 13, 2002, and pursuant to Section 501 of HSCA, 35 P.S. §6020.501, the Department deemed that all of the Disposal Areas used by the Waste Contractors, the Indspec Plant, the Crompton Plant, the Penreco Plant, the Craig Farm NPL Site, the Bruin Lagoon NPL Site, and the Shaler/JTC HSCA Site would collectively be identified as a single contiguous HSCA site, now known as the Bear Creek Area Chemical Site ("Site"). The Site is located in the Boroughs of Petrolia, Fairview, Karns City, and Bruin in Butler County; in Fairview, Parker, Washington, and Concord Townships in Butler County; and in Perry Township in Armstrong County. The surface boundaries of the Site are shown on Exhibit A, which is attached hereto and incorporated herein.

T. Resorcinol, THD, and Sulfonates are "regulated substances" under Section 103 of the Land Recycling Act, 35 P.S. §6026.103.

U. Resorcinol is a "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and Section 103 of HSCA, 35 P.S. §6020.103. The Sulfonates and THD are each a

“contaminant” under Section 101(33) of CERCLA, 42 U.S.C. §9601(33), and Section 103 of HSCA, 35 P.S. §6020.103.

V. The Site includes the surface water, groundwater, soils, and sediments that have been contaminated from the hazardous substances, contaminants, and/or Industrial Waste spilled or released from sources within the Site, including, but not limited to, the Industrial Wastes that may have been disposed at one or more of the Disposal Areas, Plant Sites, and/or the Craig Farm NPL Site, the Bruin Lagoon NPL Site, and the Shaler/JTC HSCA Site.

W. The disposal of Industrial Wastes containing resorcinol and/or Sulfonates into the environment at the Site is a “release” or “threatened release” of hazardous substances and contaminants under Section 101(22) of CERCLA, 42 U.S.C. §9601(22), and Section 103 of HSCA, 35 P.S. §6020.103.

X. On or about March 21, 2002, the Department received further information indicating that the drinking water supply for the Bruin Elementary School was impacted by hazardous substances and/or contaminants from sources within the Site, including impacts from releases of Industrial Wastes at the Site.

Y. The results of the Department’s sampling of groundwater and surface water at the Site indicate that resorcinol and/or Sulfonates and/or other hazardous substances or contaminants have been detected in the drinking water for residents and businesses throughout the Site. The Department’s sampling results at the Site characterize groundwater conditions as required by Section 304(l)(1) and the corresponding provisions of 25 Pa. Code §250.408 of the Land Recycling Act.

Z. The presence in the groundwater and surface water at the Site of resorcinol and/or Sulfonates and/or other hazardous substances or contaminants constitutes a “release” and/or

“threatened release” of hazardous substances or contaminants under Section 101(22) of CERCLA, 42 U.S.C. §9601(22), and Section 103 of HSCA, 35 P.S. §6020.103.

AA. The Site is a “facility” under Section 101(9) of CERCLA, 42 U.S.C. §9601(9), and a “site” under Section 103 of HSCA, 35 P.S. §6020.103.

AB. The Department has notified Beazer, Crompton, Penreco and others that they are each a “responsible person” under Section 701(a) of HSCA, 35 P.S. §6020.701(a), and subject to liability under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and Section 702 of HSCA, 35 P.S. §6020.702, for contaminated groundwater, surface water, or soils at the Site.

AC. The Department has information that suggests that Beazer is a potentially responsible person under CERCLA and a responsible person under HSCA for the following Disposal Areas identified in Exhibit A: Apple Road; Kelly Farm; Hemlock Road; DEP Site No. 4; DEP Site No. 5; DEP Site No. 7; Jameson; Wade Eldorado; Wade Armstrong; Craig Lagoon; Craig 3B Site; Indspec Plant; and the Craig Farm NPL Site.

AD. The Department does not currently possess information establishing that Beazer is a responsible person under CERCLA and HSCA for the following Disposal Areas identified on Exhibit A: DEP Site No. 1; DEP Site No. 2/2a; DEP Site No. 3; DEP Site No. 6; DEP Site No. 8; Wade Parsonville; Unnamed Craig Site; Unnamed Apple Road Site; Craig 3C; Bruin Lagoon NPL Site; and the Shaler/JTC HSCA Site.

The Department’s Interim Response

AE. On or about March 13, 2002, the Department began supplying bottled water to residences and businesses within the Site to replace drinking water supplies impacted or threatened to be impacted by the Site-related hazardous substances and contaminants.

AF. The Department continues to supply bottled water to approximately 700 homes and businesses within the Site as an "Interim Response" under Section 505(b) of HSCA, 35 P.S. §6020.505(b). This Interim Response is also a "response" under Section 101(25) of CERCLA, 42 U.S.C. §9601(25), and Section 103 of HSCA, 35 P.S. §6020.103.

AG. The Department has developed an administrative record and solicited public comments on the Interim Response in accordance with Section 506 of HSCA, 35 P.S. §6020.506.

Proposed Further Responses

AH. The Department proposes to permanently replace the domestic water supply for residences and businesses whose domestic water supply is impacted or threatened to be impacted by Site-related hazardous substances or contaminants. This replacement of the contaminated domestic water supply is a "response" under Section 505 of HSCA, 35 P.S. §6020.505, and a "mitigation measure" as defined under Section 103 of the Land Recycling Act, 35 P.S. §6026.103.

AI. On or about September 15, 2002, the Department received the results of a feasibility study by Baker Environmental identifying the water source, location, service boundaries, and estimated cost of a proposed new public water supply. The service boundaries of the proposed public water supply are shown on Exhibit A, which is attached hereto and incorporated herein.

AJ. On October 16, 2002, the Department issued to all known responsible persons, including, *inter alia*, Beazer, Crompton, and Penreco, the non-binding preliminary allocation of proportionate responsibility for past and future Response Costs for the proposed public water supply at the Site pursuant to Section 708 of HSCA, 35 P.S. §6020.708.

AK. On February 15, 2003, the Department published notice in the *Pennsylvania Bulletin* of the Department's listing of the Site on the Pennsylvania Priority List of Hazardous Sites pursuant to Section 502 of HSCA, 35 P.S. §6020.502.

AL. The Department intends to properly assess, close and maintain the closure of all of the Disposal Areas at the Site in accordance with the standards of HSCA and the Land Recycling Act. The Department intends to further assess and close the Kelly Farm, Apple Road, and Hemlock Road Disposal Areas within three years of the Effective Date of this Agreement.

AM. The Department intends to provide bottled water to the residents in the area near Kelly Farm currently being supplied bottled water by Beazer until the proposed new public water supply is operational. The Department intends to begin to supply bottled water to these residents upon the Effective Date of this Agreement.

AN. To date, the Department has incurred approximately \$660,000 in Response Costs at the Site. The Department will incur additional Response Costs in excess of \$2,000,000 to properly construct the replacement public water system at the Site, and to properly assess, close, and maintain the closure of all of the Disposal Areas at the Site.

Other Related Administrative and Judicial Proceedings

AO. On or about June 2, 2000, Beazer and Crompton jointly submitted a Notice of Intent to Remediate the Kelly Farm Disposal Area pursuant to the Land Recycling Act.

AP. On July 12, 2002, Beazer submitted to the Department a document entitled "Deposit Material Cleanup Plan, Kelly Farm Site, Fairview Township, Butler County, Pennsylvania," which identified Beazer's proposed activities to close the Kelly Farm Disposal Area ("Kelly Farm Cleanup Plan").

AQ. On August 26, 2002, the Department disapproved the Kelly Farm Cleanup Plan under the Land Recycling Act. Beazer subsequently appealed the Department's disapproval to the Pennsylvania Environmental Hearing Board. This appeal is pending before the Environmental Hearing Board at Beazer East, Inc. v. DEP, EHB Docket No. 2002-209-L.

AR. Under the Land Recycling Act Regulations at 25 Pa. Code, Chapter 250, Appendix A, Table 6, the Department has published a minimum threshold medium specific concentration ("MSC") of five micrograms per liter for resorcinol in groundwater under Section 303 of the Land Recycling Act. On May 7, 2002, Beazer filed a Petition with the Commonwealth of Pennsylvania Environmental Quality Board ("Environmental Quality Board") seeking to remove the minimum threshold value of five micrograms per liter for resorcinol from Table 6 of Appendix A of the regulations promulgated pursuant to the Land Recycling Act and to replace it with an MSC based upon chemical specific toxicity data.

AS. On July 16, 2002, the Environmental Quality Board declined to refer Beazer's Petition for further study by the Department.

AT. On October 4, 2002, Beazer filed a Petition in the Commonwealth Court of Pennsylvania naming the Department, the Commonwealth Environmental Quality Board, and others as respondents, seeking, among other things, to strike the minimum threshold MSC for resorcinol under the Land Recycling Act. On December 12, 2002, Beazer filed an amended Petition with the Commonwealth Court of Pennsylvania. This case is pending before the Commonwealth Court at Beazer East, Inc. v. DEP, Docket Number 722 M.D. 2002.

Beazer's Submissions Of Final Engineering Designs And Work Plans

AU. On November 15, 2002, Beazer submitted a document entitled Letter Work Plan for Focused Site Characterization of the Hemlock Road Disposal Area for Department review and approval.

AV. On November 15, 2002, Beazer submitted a document entitled Final Engineering Design for the Kelly Farm Disposal Area for Department review and approval.

AW. On November 1, 2002 , Beazer submitted a document entitled Final Engineering Design for the Apple Road Disposal Area for Department review and approval.

AX. On December 20, 2002, Beazer submitted for Department review documents summarizing the environmental conditions of concern at the following Disposal Areas identified on Exhibit A: Apple Road; Kelly Farm; Hemlock Road; DEP Site No. 4; DEP Site No. 5; DEP Site No. 7; Jameson; Wade Eldorado; Wade Armstrong; Craig Lagoon; and Craig 3B.

AY. Beazer proposes, as provided herein, to pay for a portion of the Department's past, present, and future Response Costs at the Site in accordance with Paragraph 5, below. The portion of Response Costs that Beazer proposes to pay includes, at a minimum, its share of the Department's past, present, and future Response Costs at the Site plus an appropriate premium as required by Section 709 of HSCA, 35 P.S. §6020.709. Beazer is the first responsible person for the Site to settle with the Department.

AZ. Beazer certifies that, pursuant to Section 503 of HSCA, 35 P.S. §6020.503, it has provided the Department with copies of or access to, all of the information in its possession, custody, or control that is responsive to the Department's information request dated June 7, 2002, with the exception of documents deemed privileged by Beazer.

BA. The Department has determined that the public interest is served by resolving the matters identified, above, without further litigation by entering into this Agreement with Beazer.

ORDER

After full and complete negotiation of all matters set forth in this Agreement and upon mutual exchange of covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Beazer as follows:

Authority

1. This Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 316, 402, and 610 of the Clean Streams Law, 35 P.S. §§691.5, 691.316, 691.402, and 691.610; Sections 104(7) and 602 of the Solid Waste Management Act, 35 P.S. §§6018.104(7), and 6018.602; Section 1102 of HSCA, 35 P.S. §6020.1102; Sections 104(b) and 904(b) of the Land Recycling Act, 35 P.S. §§6026.104(b), and 6026.904(b); Section 20(a) of the Dam Safety Act, 32 P.S. §693.20(a); and Section 1917-A of the Administrative Code, 71 P.S. §510-17.

Findings

2. Beazer agrees that the Findings in Paragraphs A through BA are true and correct and, in any matter or proceeding involving Beazer and the Department regarding the Site, including dispute resolution under this Agreement, these Findings shall be considered stipulated as true and correct, and Beazer shall not challenge the accuracy, validity, or admissibility of these Findings.

3. The Parties do not authorize any other persons to use the Findings in this Agreement in any matter or proceeding.

Definitions

4. Unless otherwise defined in this Agreement, the terms shall have the meaning assigned to them in HSCA and the Land Recycling Act. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

a. “Agreement” shall mean this Consent Order and Agreement, including Exhibits A-B, attached and incorporated herein.

b. “Commonwealth Government” shall mean the government of the Commonwealth of Pennsylvania, including the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor and the

departments, boards, commissions, authorities, and agencies of the Commonwealth of Pennsylvania and their officers and employees, and any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision, municipal, or other local authority.

c. “Escrow Agreement” shall mean the escrow agreement among the Department, Beazer, and J.P. Morgan Trust Company, National Association, attached and incorporated as Exhibit “C”.

d. “Indspec Plant” shall mean the Koppers’ operations and the plant property in Petrolia purchased from Beazer by Indspec in 1988 and certain parcels at the plant property retained by Beazer where Industrial Wastes were disposed.

e. “Disposal Areas” shall mean the properties where Industrial Wastes were disposed at the Site, the approximate locations of which are shown on Exhibit A, which is attached and incorporated herein, and include the surface water, groundwater, soils, and sediments that contain hazardous substances and/or contaminants contained in the Industrial Wastes.

f. “Industrial Wastes” shall mean the chemical wastes generated at the Plant Sites, including, but not limited to, resorcinol, trihydroxydiphenyl (“THD”), meta-benzene disulfonic acid (“m-BDSA”), para-phenol sulfonic acid (“p-PSA”), benzene sulfonic acid (“BSA”), calcium petronate, and petroleum.

g. “Operable Unit 2 Public Water Supply Remedial Response” shall mean the remedial response by the Department intended to eliminate the use of groundwater for drinking and other Domestic Purposes by replacing the drinking water supply at the Site that contains hazardous substances and/or contaminants with a new, permanent public water supply system. As used in the foregoing sentence, “Domestic Purposes” shall mean any domestic, potable, hygienic, recreational, and/or consumptive use of groundwater whatsoever, including, but not limited to, use for drinking,

eating, cooking, bathing, showering, swimming, cleaning, laundering, and plant watering. This remedial response is identified in the Notice of Proposed Remedial Response issued under Section 506 of HSCA, 35 P.S. §6020.506, and published in the *Butler Eagle* and *Pennsylvania Bulletin* on December 21, 2002.

h. “Parties” shall mean the Department and Beazer.

i. “Plant Sites” shall mean the manufacturing plants now or formerly owned by Koppers, Indspec, Crompton, and Penreco within the Site.

j. “Response Actions” shall mean all of the actions taken or to be taken by the Department, Beazer, and/or other responsible persons under the direction of the Department, relating to the release and threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site pursuant to Section 505 of HSCA, 35 P.S. §6020.505. Response Actions include: investigations of responsible persons; investigations of environmental conditions at the Site; actions to clean up all of the Disposal Areas, to construct the Operable Unit 2 Public Water Supply Remedial Response, and maintenance of those actions; actions to abate any pollutional discharges of hazardous substances, contaminants, and/or Industrial Wastes from Disposal Areas to surface waters within the Site; actions approved by the Department under this Agreement; and, any other actions at the Site defined as a “response” under Section 103 of HSCA, 35 P.S. §6020.103, and Section 101 of CERCLA, 42 U.S.C. §9601.

k. “Response Costs” shall mean all of the direct and indirect costs that the Department and/or other responsible persons under the direction of the Department, have incurred and will incur relating to Response Actions at the Site. Response Costs include: employee costs; attorneys’ fees; contractor costs; sampling costs; laboratory costs; oversight costs; accrued interest; and any other costs of “response” as defined in Section 103 of HSCA, 35 P.S. §6020.103, and

Section 101 of CERCLA, 42 U.S.C. §9601, incurred as part of undertaking Response Actions at the Site.

1. "Site" shall mean all of the property located in the Boroughs of Petrolia, Fairview, Karns City, and Bruin in Butler County; in Fairview, Parker, Washington, and Concord Townships in Butler County; and in Perry Township in Armstrong County within the boundaries depicted by a solid line on Exhibit A, which is attached and incorporated herein. The Site includes the Disposal Areas used by the Waste Contractors, the Indspec Plant, the Crompton Plant, the Penreco Plant, the Craig Farm NPL Site, the Bruin Lagoon NPL Site, the Shaler/JTC HSCA Site, and the surface water, groundwater, soils, and sediments subject to releases or threatened releases of hazardous substances, contaminants, and/or Industrial Wastes within the boundaries depicted by a solid line on Exhibit A.

Payment Of Response Costs

5. In payment of a portion of past and future Response Costs for the Site, including, at a minimum, Beazer's share of the Department's past, present, and future Response Costs at the Site plus an appropriate premium as required by Section 709 of HSCA, 35 P.S. §6020.709, Beazer shall pay the Department \$18,118,813 in accordance with the provisions of this Paragraph 5. Upon execution of this Agreement, Beazer shall place the sum of \$18,118,813 in escrow pursuant to the Escrow Agreement, attached and incorporated as Exhibit C. The full sum of \$18,118,813 shall be paid to the Department after the Effective Date of this Agreement in accordance with the terms and conditions of the Escrow Agreement.

Indspec Plant

6. Beazer, individually or with Indspec, shall submit to the Department a work plan which, at a minimum, will address the release or threatened release of hazardous substances,

contaminants, and Industrial Waste at the Indspec Plant using the standards and procedures of the Land Recycling Act (the "Work Plan") as follows:

a. Within 60 days of the Effective Date of this Agreement, Beazer, individually or with Indspec, shall submit the Work Plan to the Department for review and approval;

b. Within 60 days of the Department's receipt of the Work Plan in accordance with Paragraph 6a, above, the Department will, in writing: (1) approve the document in whole or in part; (2) disapprove the document in whole or in part, and direct Beazer to correct the deficiencies; or (3) any combination of the above;

c. If the Department disapproves the Work Plan or any portion thereof, Beazer shall, within 30 days after receipt of the Department's disapproval, either correct the deficiencies as directed by the Department and re-submit the revisions to the Department for approval pursuant to Paragraph 6b, above, or request Dispute Resolution on the disapproval pursuant to Paragraph 19, below;

d. Upon approval of the entire Work Plan by the Department or completion of Dispute Resolution, the approved Work Plan shall be designated the "Final Work Plan."

7. Within 10 days after designation of the Final Work Plan in accordance with Paragraph 6, above, Beazer shall submit (with a copy to the Department) to the United States Environmental Protection Agency a Letter of Commitment, with the Final Work Plan attached, proposing to meet the corrective action goals under the Resource Conservation and Recovery Act ("RCRA") Corrective Action Program for the release of hazardous wastes and constituents at the Indspec Plant in accordance with a Facility Lead Agreement ("Facility Lead Agreement").

8. Upon approval of the Facility Lead Agreement by the United States Environmental Protection Agency, any and all obligations of Beazer under the 1987 Consent Order and Agreement

shall terminate and be replaced by the obligations of Beazer contained in the Facility Lead Agreement.

Certification by Beazer

9. Beazer certifies that, pursuant to Section 503 of HSCA, 35 P.S. §6020.503, it has provided the Department with copies of or access to, all of the information in its possession, custody, or control that is responsive to the Department's information request dated June 7, 2002, with the exception of documents deemed privileged by Beazer. The Department agrees that Beazer shall have no further obligation after the Effective Date of this Agreement to provide additional responses to the Department's June 7, 2002, information request. Notwithstanding, the Department reserves the right to make additional information requests to Beazer pursuant to Section 503 of HSCA, 35 P.S. §6020.503, as the need for additional, specific information that was not otherwise requested in the Department's June 7, 2002, information request arises.

Access and Use Restrictions

10. Beazer shall grant the Department and its designated agents, including contractors under the direction of the Department, access to conduct Response Actions at any property controlled by Beazer within the Site. Nothing in this Paragraph is intended to limit in any way the right of access or entry that the Department may otherwise have by operation of law.

11. The Department may need to obtain deed restrictions, easement agreements, and/or restrictive covenants with landowners of the Disposal Areas within the Site in order to implement and maintain site-specific remediation or closure activities that are Response Actions for the Site. The Department shall provide Beazer with copies of all deed restrictions, easement agreements, and/or restrictive covenants.

12. Beazer and its officers, directors, agents, assigns, managers, employees, privities, contractors, consultants, successors, or any other persons acting under or for Beazer shall not conduct any activity that would be inconsistent with, disturb, or compromise the integrity of any Response Actions at the Site. Beazer's submission of comments on proposed Response Actions at the Site shall not be considered an activity that is inconsistent with, disturbance of, or a compromise to the integrity of Response Actions at the Site for purposes of this Agreement. Furthermore, this Paragraph is not intended to prevent Beazer from engaging in any activities associated with the development of toxicological assessments or other scientific studies of any chemicals, including, but not limited to, resorcinol and/or Sulfonates. For avoidance of doubt, this Paragraph shall have no impact on Beazer's present or future right to petition the Environmental Quality Board and/or the Commonwealth Court of Pennsylvania to establish a health based standard for resorcinol or Sulfonates under the Land Recycling Act.

Stipulated Penalties

13. If Beazer fails to comply in a timely manner with the requirements of Paragraph 6, above, Beazer shall be in violation of this Agreement and, in addition to other applicable remedies, shall pay a civil penalty as follows: a) for the first ten days – \$500 per day for each violation; b) for the 11th through 20th days – \$750 per day for each violation; and c) for all days thereafter \$1,500 per day for each violation. The penalty payment shall be due upon receipt of written notice from the Department, and shall be payable monthly on or before the 15th day of each succeeding month. The Department shall not seek a statutory penalty for any violation addressed in this Paragraph 13.

14. Payment of any stipulated penalty shall neither constitute a waiver of Beazer's duty to meet its obligations hereunder, nor preclude the Department from commencing an action to compel Beazer's compliance with the terms and conditions of this Agreement, or any applicable statute, rule,

regulation, permit, or order of the Department. Moreover, Beazer shall not challenge the Department's authority to bring an action to compel payment of stipulated penalties hereunder. In any such action by the Department, the sole issue shall be whether Beazer's acts or omissions gave rise to the stipulated penalty under Paragraph 13, above. However, if the facts or circumstances, which the Department asserts as the basis for a stipulated penalty are the subject of Dispute Resolution commenced by Beazer pursuant to Paragraph 19, below, the time period of the stipulated penalty shall be determined as part of the Dispute Resolution. Beazer shall not be obligated to make payment of such penalties until termination of such Dispute Resolution procedure in favor of the Department.

15. If the Department successfully prosecutes an action against Beazer to collect any stipulated penalty due under this Agreement, Beazer shall pay all penalties owed and shall reimburse the Department for all reasonable costs and expenses of such action including, but not limited to, the Department's reasonable personnel costs and attorneys' fees.

16. Except as provided in Paragraphs 13 through 15, above, Beazer shall not be subject to any civil penalties by the Department for any acts or omissions associated with the disposal of Industrial Wastes at the Disposal Areas that occurred prior to the Effective Date of this Agreement. The acts covered by this Paragraph specifically include any continuing discharges of Industrial Wastes from the Disposal Areas that may occur after the Effective Date of this Agreement.

17. All payments made by Beazer pursuant to Paragraph 13, shall be made by corporate check or the like to the Commonwealth of Pennsylvania Hazardous Sites Cleanup Fund and shall reference the Bear Creek Area Chemical Site. Payments shall be forwarded to:

Mr. Charles Tordella, Project Manager
Hazardous Sites Cleanup
Department of Environmental Protection
230 Chestnut Street
Meadville, PA 16335-3481

Liability

18. Beazer shall inform all persons necessary for the implementation of this Agreement of the terms and conditions of this Agreement. Beazer shall be liable for any violation of this Agreement, including those caused by, contributed to, or allowed by its directors, officers, agents, employees, contractors or consultants, successors or assigns, or any other persons acting under or for Beazer.

Dispute Resolution

19. Excepting disputes arising under Paragraph 5, above, all disputes arising from or associated with this Agreement shall be resolved according to the following procedures.

- a. To initiate dispute resolution, Beazer shall provide written notice to the Department within five working days of a dispute concerning the obligations imposed upon Beazer under this Agreement. Beazer shall have an additional ten working days to provide the Department with a written list of objections to the Department's action (the "Statement of Position").
- b. The Department shall have 20 days following receipt of Beazer's Statement of Position to provide its Response, in writing, to Beazer.
- c. Within the 20 day period following receipt of the Department's Response by Beazer, the Department's Regional Director or, in the event the Regional Director is unavailable, the

Assistant Regional Director, and Beazer's Vice President shall meet and confer in an attempt to resolve the dispute. In the event the Parties are unable to resolve the dispute in this fashion within this period, the Parties shall jointly set out in writing their unresolved differences, identifying the issues which remain in dispute and any work that Beazer can reasonably undertake that is unaffected by the issues that are in dispute (the "Joint Dispute Statement").

d. Following the Parties' development of the Joint Dispute Statement, the Department shall issue a written decision setting forth its final position on the issues in dispute. The Department's written decision shall constitute an appealable action for purposes of review by the EHB.

e. During the pendency of an appeal by Beazer before the EHB of the Department's written decision, and until the later of such time as either: 1) Beazer withdraws the appeal; or 2) the Parties reach agreement either through settlement negotiations or by means of an EHB opinion or adjudication, Beazer shall not be obligated to perform any work set forth in the document or report that is being contested, or to pay any costs being demanded, except as set forth in the Joint Dispute Statement. Notwithstanding, Beazer shall proceed to perform any obligations under this Agreement not contested in its Statement of Position or, subsequently, the Joint Dispute Statement. In any appeal, Beazer shall not contest the foregoing Findings or Beazer's obligations under this Agreement.

f. In an appeal before the EHB, the Parties shall have 60 days to conduct expedited discovery. The period of discovery shall commence seven days after Beazer's Notice of Appeal is received by the Northwest Region, Office of Chief Counsel. Beazer shall file its Pre-Hearing Memorandum within 15 days after the close of discovery. The Department shall file its Pre-Hearing Memorandum within 15 days of its receipt of Beazer's Pre-Hearing Memorandum.

Nothing contained herein shall preclude the Parties from extending the foregoing schedule by mutual agreement.

g. Within 30 days of a final resolution of the appeal, either through an EHB opinion or adjudication or through settlement negotiations that may occur during the pendency of the appeal before the EHB, Beazer shall perform its obligations under this Agreement consistent with the EHB opinion or adjudication or any settlement agreement reached between the Parties.

h. All decisions of the EHB regarding disputes submitted hereunder shall be final and the Parties expressly waive any right of appeal, statutory or otherwise.

Indemnification and Insurance

20. Beazer shall indemnify the Department and hold the Department harmless for any claims arising from any injuries or damages to persons or property resulting from any acts or omissions of Beazer, its directors, officers, employees, agents, assigns, receivers, trustees, successors, contractors, subcontractors, or any other person acting under or on Beazer's behalf in carrying out Beazer's obligations under Paragraph 6 of this Agreement.

21. a. The Department shall require its contractors and consultants, as a condition of any contract that is executed after the Effective Date of this Agreement to perform Response Actions at the Site, to obtain insurance and name Beazer as an additional insured party so as to protect Beazer from any claims arising from any injuries or damages to persons or property resulting from any acts or omissions of the Department's contractors or consultants in carrying out Response Actions at the Site.

b. For contracts executed prior to the Effective Date of this Agreement, the Department will request that its contractors or consultants performing Response Actions at the Site name Beazer as an additional insured party so as to protect Beazer from any claims arising from any

injuries or damages to persons or property resulting from any acts or omissions of the Department's contractors or consultants in carrying out Response Actions at the Site.

Contribution

22. Subject to the Department's Reservation of Rights in Paragraph 39, Beazer is a person that has resolved its liability to the Department for the Site and Beazer shall not be liable for claims for contribution regarding any matters arising from the past, present, or future release or threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site, including, without limitation, all matters addressed in this Agreement, as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), and Section 705(c)(2) of HSCA, 35 P.S. §6020.705(c)(2). For purposes of this contribution protection Paragraph, and for avoidance of doubt, the following shall be deemed subject matters addressed by the contribution protection provisions of this Agreement: construction costs for the Operable Unit 2 Public Water Supply Remedial Response, including cost overruns or increases; extensions of the Operable Unit 2 Public Water Supply to service additional locations within the Site; extensions of the Operable Unit 2 Public Water Supply to service additional locations outside the Site as a result of releases originating within the Site; costs associated with sewerage fees, use or withdrawal taxes, or usage fees of any kind; operating, maintenance, and permitting costs for withdrawal, treatment, and conveyance systems; future groundwater sampling and analysis costs within the Site or related to the Operable Unit 2 Public Water Supply; Department oversight costs; costs of right-of-way acquisition; costs of purchasing any existing municipal water supply systems; Department-supplied or Beazer-supplied bottled water costs; Response Costs previously incurred or to be incurred at any of the Disposal Areas, including, but not limited to, investigation costs, capping costs, excavation expenses, or other expenses to remediate any impacts of Industrial Waste disposal, as well as costs to collect and treat discharges of

Industrial Wastes to surface waters. This contribution protection is intended to be as broad as permissible under Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), Section 705(c)(2) of HSCA, 35 P.S. §6020.705(c)(2), and is specifically intended to encompass all Response Costs and Response Actions relating to the Site, including the Response Costs and Response Actions listed above. This contribution protection shall take effect upon execution of this Agreement by the Parties, extends only to Beazer, and shall terminate upon Beazer's failure to meet its obligations under this Agreement.

23. In consideration of Beazer's payment of Response Costs for, among other things, the release or threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site occurring before December 16, 1988, and subject to the Department's Reservation of Rights in Paragraphs 39 through 44, Indspec shall not be liable, to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), and Section 705(c)(2) of HSCA, 35 P.S. §6020.705(c)(2), for claims for contribution regarding the release or threatened release of hazardous substances, contaminants, and/or Industrial Wastes that occurred prior to December 16, 1988, the date upon which Indspec bought a portion of the Indspec Plant from Beazer, and/or relating to the continuing release of hazardous substances, contaminants, and/or Industrial Wastes at the Site resulting from Koppers' disposal activities occurring before December 16, 1988. Indspec is not protected from claims relating to releases or threatened releases of hazardous substances, contaminants, and/or Industrial Wastes after December 16, 1988, to the extent that such releases are not the result of Koppers' disposal activities occurring before December 16, 1988. This contribution protection is intended to be as broad as permissible under Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), and Section 705(c)(2) of HSCA, 35 P.S. §6020.705(c)(2), shall take effect upon execution of this

Agreement by the Parties, extends only to Indspec, and shall terminate upon Beazer's failure to meet its obligations under this Agreement.

Additional Acknowledgments

24. The Department acknowledges that Beazer has proposed to investigate and remediate the Indspec Plant in accordance the standards and procedures set forth in the Land Recycling Act as part of a Facility Lead Agreement. For purposes of this Agreement and the Facility Lead Agreement, the Department agrees that Beazer and Indspec may assume that the groundwater beneath the Site shall not be used for Domestic Purposes, as the term is defined in Paragraph 4.g, above. The Department also agrees that the Department's action in listing the Site on the Pennsylvania Priority List of Hazardous Sites shall not preclude Beazer and/or Indspec from proceeding to implement the Facility Lead Agreement for the Indspec Plant in accordance with the standards and procedures under the Land Recycling Act. Furthermore, in the event that a third party alleges that Beazer and Indspec are not permitted to assume the groundwater beneath the Site shall not be used for Domestic Purposes, as that term is defined in Paragraph 4.g, above, of this Agreement, and/or a third party alleges that the Department's action in listing the Site on the Pennsylvania Priority List of Hazardous Sites precludes Beazer and/or Indspec from proceeding to implement a Facility Lead Agreement for the Indspec Plant in accordance with the standards and procedures under the Land Recycling Act, the Department agrees to cooperate with Beazer in the defense of the positions as stated in this Paragraph 24.

25. Beazer acknowledges that the Department has no obligation to defend Beazer in any suit, demand, or claim for contribution for any matters arising from the release and threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site, arising out of any

Response Actions at the Site, or arising out of this Agreement. However, the Department agrees to cooperate with Beazer in the defense of this Agreement against appeals of this Agreement by third parties.

Beazer's Covenants Not to Sue

26. Beazer covenants not to sue and shall not assert any appeals, claims, demands, or causes of action, in law or in equity, against the Commonwealth Government arising from the release and threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site, arising out of any Response Actions at the Site, or arising out of this Agreement. This covenant not to sue extends only to the Commonwealth government and does not extend to any other person. As to the Wade-Armstrong, Wade-Eldorado, Wade Parsonville, DEP Site No. 4 and/or Jameson Disposal Areas at the Site, this covenant not to sue does not extend to any political subdivisions, municipal, or other local authority. Furthermore, as to the Wade-Parsonville Disposal Area at the Site, this covenant not to sue does not extend to the Pennsylvania Department of Transportation.

Existing Litigation

27. Within ten days of Effective Date of this Agreement by the Parties, Beazer shall withdraw, with prejudice, its appeal now pending before the Environmental Hearing Board at Beazer East, Inc. v. DEP, Docket Number 2002-209-L.

28. Within ten days after the Effective Date of this Agreement, Beazer shall amend the Petition now pending before the Commonwealth Court in the case captioned as Beazer East, Inc. v. DEP, docketed at Commonwealth Court Docket Number 722 M.D. 2002 to remove the request for relief that Respondents cease and desist decision-making that applies or implicates the MSC for resorcinol.

29. Upon execution of this Agreement, and until final resolution of the case captioned as Beazer East, Inc. v. DEP, docketed at Commonwealth Court Docket Number 722 M.D. 2002, in any correspondence or other public statements regarding resorcinol at the Site the Department will state that the 5 parts-per-billion threshold MSC for resorcinol contained in 25 Pa. Code §250, Appendix A, Table 6 is a default value and was not derived from actual toxicological data used in the development of Statewide Health Standards under the Land Recycling Act.

30. The Parties' rights and obligations as provided in this Agreement shall be unaffected by any determination or ruling issued by the Commonwealth Court in connection with the case captioned as Beazer East, Inc. v. DEP, docketed at Commonwealth Court Docket Number 722 M.D. 2002, and Beazer shall not use such determination or ruling in any way to challenge any Response Actions at the Site.

Waiver of Other Claims by Beazer

31. Beazer shall not assert any claims for reimbursement, contribution, and/or indemnity from the Pennsylvania Hazardous Sites Cleanup Fund for matters arising from the release and threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site, arising out of any Response Actions at the Site, or arising out of this Agreement. Beazer reserves the right to seek contribution from person or entities other than the Pennsylvania Hazardous Sites Cleanup Fund or the Commonwealth Government (except as otherwise provided in Paragraph 26) for matters arising from the release and threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site or arising out of any Response Actions or Response Costs at the Site, and nothing in this Agreement shall be construed to diminish or reduce that right.

32. Beazer waives any claims or defenses that it may have regarding the application of Sections 708, 709, and 1301 of HSCA, 35 P.S. §§6020.708, 6020.709, and 6020.1301, for matters

arising from the release and threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site, arising out of any Response Actions at the Site, or arising out of this Agreement.

Department's Covenants Not to Sue

33. Subject to the Reservation of Rights provided in Paragraphs 39 through 44, below, the Department covenants not to sue or to take administrative action against Beazer for any Response Costs, Response Actions, or injunctive relief, arising from the release or threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site. These covenants not to sue shall take effect upon execution of this Agreement by the Parties, extend only to Beazer, and shall terminate upon Beazer's failure to comply with its obligations under this Agreement.

34. In consideration of Beazer's payment of Response Costs for, among other things, the release or threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site occurring before December 16, 1988, and subject to the Department's Reservation of Rights in Paragraphs 39 through 44, the Department covenants not to sue or to take administrative action against Indspec for any Response Costs, Response Actions, or injunctive relief, arising from the release or threatened release of hazardous substances, contaminants, and/or Industrial Wastes at the Site that occurred prior to December 16, 1988, the date upon which Indspec bought a portion of the Indspec Plant from Beazer, and/or relating to the continuing release of hazardous substances, contaminants, and/or Industrial Wastes at the Site resulting from Koppers' disposal activities occurring before December 16, 1988. The Department's covenant not to sue Indspec does not extend to civil or administrative action against Indspec for any Response Costs, Response Actions, or injunctive relief, arising from the release or threatened release of hazardous substances, contaminants and/or Industrial Wastes after December 16, 1988, to the extent that such releases are

not the result of Koppers' disposal activities occurring before December 16, 1988. These covenants not to sue shall take effect upon execution of this Agreement by the Parties, extend only to Indspec, and shall terminate upon Beazer's failure to comply with its obligations under this Agreement.

Relief from Liability under the Land Recycling Act

35. When the public water supply contemplated by the Operable Unit 2 Public Water Supply Remedial Response becomes operational, Beazer shall be a person that participated in the remediation of the groundwater and to whom the liability protection provided in Chapter 5 of the Land Recycling Act applies for the groundwater within the public water system service area.

36. In the event that the public water supply system identified by the Department in the Operable Unit 2 Public Water Supply Response is extended to other areas within the Site, Beazer will receive the liability protection afforded by Section 501 of the Land Recycling Act for groundwater beneath any such areas when the public water supply system becomes operational.

37. In the event that the public water supply system identified by the Department in the Operable Unit 2 Public Water Supply Response is extended to other areas outside the Site solely as a result of releases or threatened releases of hazardous substances, contaminants, and/or Industrial Wastes originating within the Site, Beazer will receive the liability protection afforded by Section 501 of the Land Recycling Act for groundwater beneath any such areas when the public water supply system becomes operational.

38. Upon completion of each Response Action at a Disposal Area which meets one or a combination of cleanup standards under the Land Recycling Act, Beazer shall be a person that participated in the remediation of that Disposal Area and to whom the liability protection provided in Chapter 5 of the Land Recycling Act applies for that Disposal Area.

Department's Reservation of Rights

39. Notwithstanding any other provision of this Agreement, the Department reserves the right to sue Beazer for additional Response Costs relating to the Site, or to issue an administrative order requiring Beazer to perform Response Actions at the Site, if:

a. Beazer, its officers, directors, managers, consultants, or contractors cause the Department to incur additional Response Costs or to perform additional Response Actions at the Site as a result of false representations or statements in any document submitted by Beazer, its contractors, or consultants to the Department dated after 1991 regarding the assessment and closure of Disposal Areas at the Site, and/or as a result of false representations or statements in any document submitted to the Department pursuant to this Agreement.

b. For the avoidance of doubt, any dispute arising under this Paragraph 39 shall be subject to the dispute resolution procedures in Paragraph 19, above.

40. For the purposes of this Agreement, the information received by and presently known to the Department includes all written information obtained by the Department prior to the execution of this Agreement by the Parties, including all reports, writings, lab and monitoring results, data, or other documents which have been provided to or are in the possession of the Department relating to the Site.

41. The covenants not to sue by the Department set forth in Paragraphs 33 and 34 shall not apply to the following claims by the Department against Beazer and/or Indspec for:

- a. Failure to meet the requirements of this Agreement;
- b. Past, present, or future releases or threatened releases of hazardous substances, contaminants, and/or Industrial Wastes outside the boundaries of the Site;
- c. Past, present, or future violations of state or federal criminal law;

d. Damages for injury to, destruction of or loss of “natural resources” as that term is defined in Section 103 of HSCA, 35 P.S. §6020.103; and

e. Violations of law at the Indspec Plant, and the Department reserves the right to issue orders or take other enforcement actions for purposes of this Paragraph 41e.

42. The covenants not to sue by the Department set forth in Paragraph 33 shall not apply to claims by the Department against Beazer for releases or threatened releases of hazardous substances, contaminants, and/or Industrial Wastes within the Site generated by Beazer after the Effective Date of this Agreement.

43. The covenants not to sue by the Department set forth in Paragraph 34 shall not apply to claims by the Department against Indspec for releases or threatened releases of hazardous substances, contaminants, and/or Industrial Wastes within the Site generated by Indspec after the Effective Date of this Agreement.

44. With regard to all matters not expressly addressed in this Agreement, the Department specifically reserves all rights to institute equitable, administrative, civil, or criminal actions against Beazer and Indspec for any past, present, or future violation of any statute, regulation, permit or order, or any pollution or potential pollution to the air, land, or waters of the Commonwealth of Pennsylvania.

Existing Obligations Unaffected

45. Except as specifically provided in this Agreement, nothing set forth in this Agreement is intended, nor shall be construed, to relieve or limit Beazer’s and/or Indspec’s obligation to comply with any existing or subsequent statute, regulation, permit or order. In addition, nothing set forth in this Agreement is intended, nor shall be construed, to authorize any violation of any statute, regulation, order, or permit issued or administered by the Department.

Remedies for Breach

46. Beazer's failure to comply with Paragraph 5, above, of this Agreement and/or Beazer's failure to comply with Paragraphs 6 and 7, above, of this Agreement shall be deemed a material breach, and in the event of any such breach, the Department may, in addition to any remedies prescribed herein, institute any equitable, administrative, or civil action, including an action to enforce this Agreement. These remedies are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

Correspondence with the Department

47. All correspondence with the Department concerning this Agreement shall be mailed or hand delivered to:

Mr. Charles Tordella, Project Manager
Hazardous Sites Cleanup
Department of Environmental Protection
230 Chestnut Street
Meadville, PA 16335-3481

Correspondence with Beazer

48. All correspondence with and notice to Beazer concerning this Agreement shall be addressed to:

Mr. Mitchell Brouman, Program Manager
Beazer East, Inc.
c/o Three Rivers Management, Inc.
One Oxford Center, Suite 3000
Pittsburgh, PA 15219-6401

with a copy to:

General Counsel
Beazer East, Inc.
c/o Three Rivers Management, Inc.
One Oxford Center, Suite 3000
Pittsburgh, PA 15219-6401

Beazer shall notify the Department whenever there is a change in any of the contact person's names, titles, or addresses. Beazer agrees that service of any notice or any legal process for any purpose under this Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above addresses.

Exhibits

49. The following Exhibits are attached and incorporated herein:
- a. Exhibit A is a map of the Site boundaries, Disposal Areas, and the Public Water Service Area.
 - b. Exhibit B is the 1987 Consent Order and Agreement between Koppers and the Department.
 - c. Exhibit C is the Escrow Agreement between Beazer, J.P. Morgan Trust Company, National Association, and the Department.

Attorneys' Fees

50. The Parties shall bear their respective attorneys' fees, expenses, and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Agreement.

Entire Agreement

51. This Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provision herein in any litigation or any other proceeding.

Modification

52. No changes, additions, modification, or amendments of this Agreement shall be effective unless they are set out in writing and signed by the Parties.

Titles

53. A title used at the beginning of any Section of this Agreement may be used in the construction of that Section, but shall not be treated as controlling.

Severability

54. The Paragraphs of this Agreement shall be severable and should any part be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

Effect on Third Parties

55. Except as provided in Paragraphs 23 and 34, above, relating to Indspec, nothing in this Agreement shall constitute, or be construed as, a release or covenant not to sue regarding any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Parties may have against any person that is not a party to this Agreement. Except as provided in Paragraphs 23 and 34, above, relating to Indspec and Paragraph 26, above, the Parties expressly reserve the right to sue or continue to sue any person that is not a party to this Agreement.

56. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. Moreover, nothing in this Agreement shall be construed to create any obligations for or any liability to any person not a party to this Agreement.

Opportunity for Public Comment

57. Pursuant to Section 1113 of HSCA, 35 P.S. §6020.1113, the Department shall publish a notice in the *Pennsylvania Bulletin* and the *Butler Eagle* containing a summary of the terms of this Agreement. The Department agrees to provide Beazer with a copy of the draft notice prior to publication for review and comment. This notice shall also be sent to the other known responsible persons for the Site. The Department shall receive and consider comments relating to this

Agreement for 60 days after publication of this notice. The Department reserves the right to withdraw its consent to this Agreement if the comments disclose facts or considerations demonstrating that this Agreement is inappropriate, improper, or not in the public interest.

Effective Date

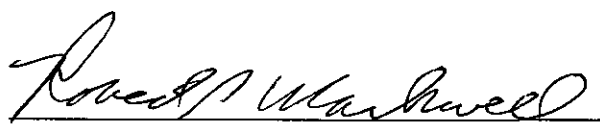
58. The Effective Date of this Agreement shall be the date the Department notifies Beazer, in writing, that this Agreement is final and effective in its present form, and that the Department has filed a response to any significant written comments received pursuant to the preceding Paragraph, or that no such comments were received.

59. If the Department notifies Beazer that it is withdrawing its consent to this Agreement in response to the public comments received under Paragraph 57, above, the terms of this Agreement shall be void, shall have no force or effect, and shall not be used as evidence by the Department in any matter or proceeding, or for any other purpose, provided, however, the terms of the Escrow Agreement shall continue in force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives. The undersigned representative of Beazer certifies under penalty of law, as provided by 18 Pa.C.S. §4904, that he is authorized to execute this Agreement on behalf of Beazer; that Beazer consents to the entry of this Agreement as a final ORDER of the Department; and that Beazer hereby knowingly waives its rights to appeal this Agreement and to challenge its content or validity, which rights may be available under Sections 508 and 1102 of HSCA, 35 P.S. §§6020.508 and 6020.1102; Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2

Pa.C.S. §103(a) and Chapters 5A and 7A, or any other provision of law. Signature by Beazer's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR BEAZER EAST, INC.:

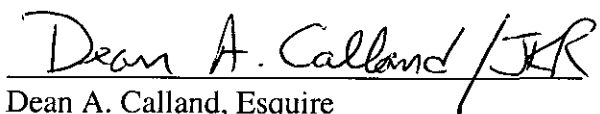


Robert S. Markwell,
Vice-President

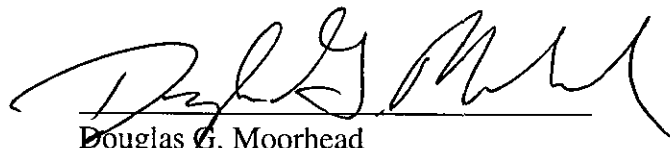
**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**



S. Craig Lobins
Program Manager
Environmental Cleanup
Northwest Regional Office



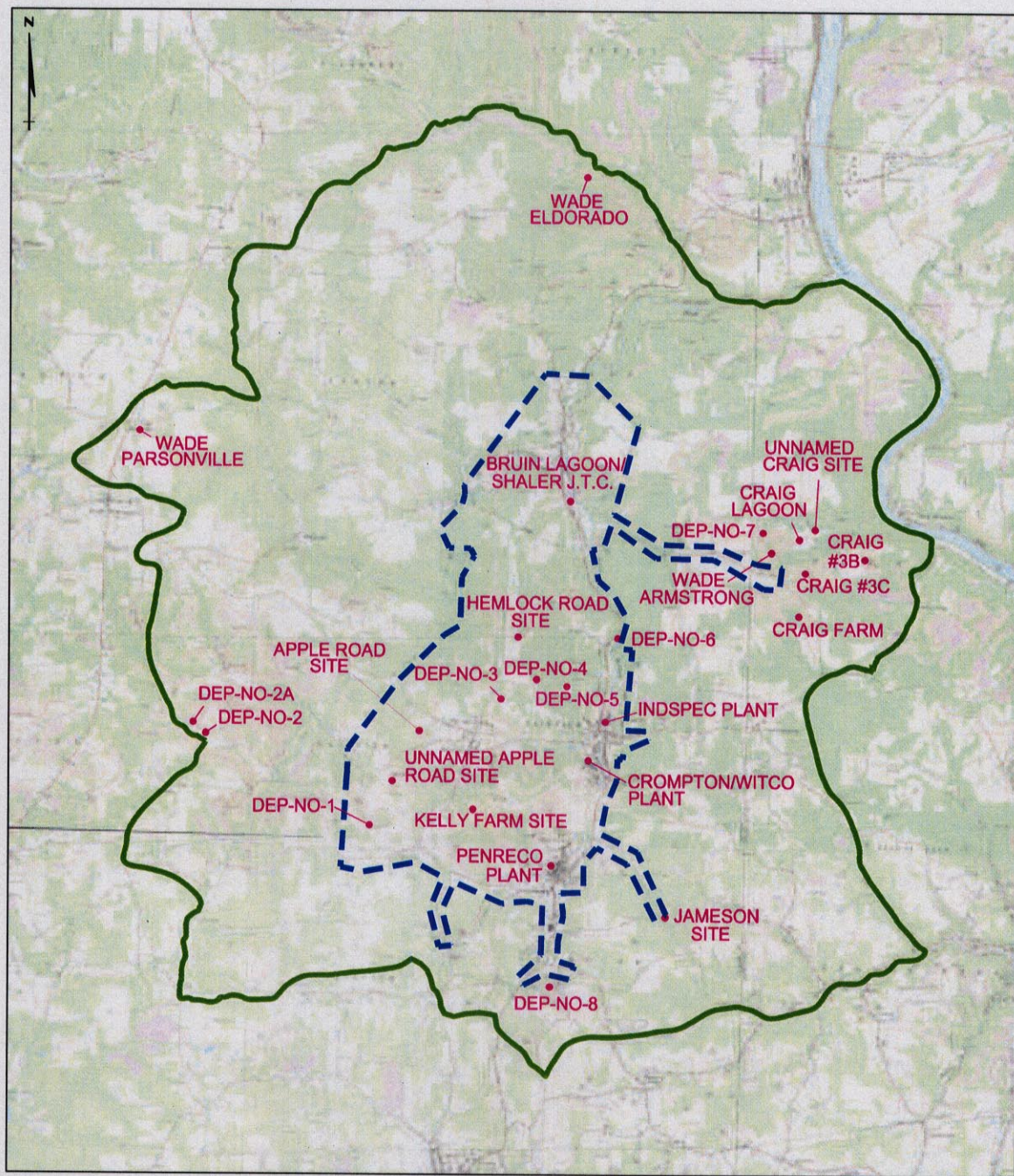
Dean A. Calland, Esquire
Babst, Calland, Clements, and Zomnir, P.C.
Attorneys for Beazer East, Inc.



Douglas G. Moorhead
Assistant Counsel



Joseph K. Reinhart, Esquire
Babst, Calland, Clements, and Zomnir, P.C.
Attorneys for Beazer East, Inc.



LEGEND

- DISPOSAL AREAS
- BEAR CREEK AREA CHEMICAL SITE
- - - OU2 PUBLIC WATER SUPPLY REMEDIAL RESPONSE AREA

0 0.5 1.0 2.0
MILES

REV #	DATE	DESCRIPTION	APPRO

ISSUE DATE:
04/21/2003

BEAR CREEK AREA CHEMICAL SITE
BUTLER AND ARMSTRONG COUNTIES, PENNSYLVANIA

BEAR CREEK AREA CHEMICAL
SITE BOUNDARIES

DRAWING NUMBER
ATTACHMENT A

B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

In the Matter of:	:	
	:	
KOPPERS COMPANY, INC.	:	Clean Streams Law Violations
Organic Materials Group	:	
Borough of Petrolia	:	
Butler County	:	

CONSENT ORDER AND AGREEMENT

The Commonwealth of Pennsylvania, Department of Environmental Resources ("PaDER"), in conjunction with the Sierra Club and the Allegheny River Coalition ("ARC"), has determined the following facts, which Koppers Company, Inc. ("Koppers") agrees are true with respect to its obligation to PaDER, the Sierra Club and ARC, but which are not admitted with respect to any other party, except for the facts and conclusions alleged in Paragraphs J and K, which Koppers neither admits nor denies:

A. Koppers is a Delaware corporation with its principal business office at 436 Seventh Avenue, Koppers Building, Pittsburgh, PA 15219.

B. Koppers owns and operates a facility in Petrolia Borough, Butler County ("the plant") which manufactures organic materials, including, but not limited to, resorcinol.

C. On November 16, 1974, the U.S. Environmental Protection Agency issued to Koppers National Pollutant Discharge Elimination System ("NPDES") Permit PA0001988, authorizing the discharge of treated industrial wastewater and sewage from the discharge point identified as Outfall 006 into the South Branch of Bear Creek, a water of the Commonwealth.

D. From November 16, 1974 to date, Koppers has submitted discharge monitoring reports for Outfall 006 which show that Koppers has violated many effluent limits contained in NPDES Permit PA0001988, including pH, total suspended solids, five-day BOD, oil and grease, and total iron.

E. On June 4, 1979, June 30, 1982, and August 31, 1984, Koppers submitted NPDES permit applications for point source discharges from the plant to the South Branch of Bear Creek, including Outfall 006. On September 30, 1985, PaDER issued amended NPDES Permit PA0001988 for eleven outfalls.

F. There are numerous other point source discharges of pollutants from the plant into the South Branch of Bear Creek, none of which are authorized by permit. In addition, there have been at least two occasions when pollutants were discharged directly to the South Branch of Bear Creek.

G. One source of contamination is past and present materials handling practices at the plant which have resulted in pollutants entering and contaminating the groundwater, a water of the Commonwealth.

H. Polluted groundwater infiltrates the plant's piping system and discharges through point sources into the South Branch of Bear Creek.

I. Polluted groundwater also enters the South Branch of Bear Creek from the plant as a non-point source of pollutants.

J. Koppers' discharge of wastewater in violation of its present and former NPDES Permit PA0001988, by discharges in excess of permit limits, discharges of unauthorized pollutants and discharges from unpermitted outfalls, constitutes a violation of Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§1311(a) and 1342, and Sections 301, 307 and 611 of the Clean Streams Law, the Act of

June 7, 1937, P.L. 1987, as amended, 35 P.S. §§691.301, 691.307 and 691.611 ("Clean Streams Law").

K. Koppers' discharge of pollutants into the groundwater and surface waters of the Commonwealth of Pennsylvania without authorization by permit constitute violations of Sections 301, 307, 401 and 611 of the Clean Streams Law, 35 P.S. §§691.301, 691.307, 691.401 and 691.611, as well as a violation of Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §1251 et seq.

L. Koppers has engaged reputable consulting firms satisfactory to PaDER and counsel for the Sierra Club and ARC to oversee, provide advice to Koppers, and monitor the preparation of applications, plans and reports to PaDER and counsel for the Sierra Club and ARC, and to certify the soundness of Koppers' proposals and the reasonableness of the schedules to implement them.

M. Koppers has undertaken investigations evaluating treatability alternatives for the storm and groundwater at the plant. The technologies investigated were activated sludge, batch reverse osmosis followed by UV/hydrogen peroxide, continuous reverse osmosis followed by UV/ozonation, activated carbon, and evaporation.

N. Koppers has undertaken an on-site treatability study utilizing reverse osmosis.

O. Koppers is evaluating the possibility of plant reuse of both dry weather direct discharges and contaminated stormwater runoff.

P. Koppers has conducted four hydrogeologic investigations: the Phase I Study of the shallow aquifer underneath the plant, the Phase II Study of deeper groundwater underneath the plant, an assessment of groundwater conditions beneath a previously used spray field, and an upper bedrock investigation submitted to

PaDER and counsel for the Sierra Club and ARC. PaDER, the Sierra Club and the ARC believe that additional study is necessary.

Q. On January 29, 1986, Koppers submitted to PaDER, and on August 21, 1986, PaDER approved, a revised Preparedness, Prevention and Contingency Plan ("PPC Plan"), which will require updating in the future.

R. Koppers has agreed to correct the NPDES violations alleged by PaDER, the Sierra Club and ARC and to conduct certain projects involving groundwater investigation and remediation, all as specified in this Consent Order and Agreement.

S. On February 28, May 20, September 18 and September 26, 1986, Koppers submitted to PaDER and counsel for the Sierra Club and the ARC plans for the design and construction of a stormwater collection system. Koppers is presently constructing this system. At these times, Koppers also presented a preliminary conceptual plan for the design and construction of a groundwater collection system. On February 28, 1986, April 14, 1987 and May 8, 1987, Koppers also submitted applications to amend NPDES Permit PA 0001988 intended to account for the proposed stormwater system and additional discharges not covered by the permit issued on September 30, 1985.

NOW, THEREFORE, this 12th day August, 1987, the parties intending to be legally bound by the mutual covenants herein, Koppers consents to the entry of the following order:

ORDER

1. Paragraphs 2 through 12 of this Consent Order and Agreement constitute an Order of PaDER issued pursuant to Sections 5, 316, 402 and 610 of the Clean Streams Law, 35 P.S. §§691.5, 691.316, 691.402 and 691.610, and Section 1917-A of

the Administrative Code of 1929, the Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §510-17.

2. (a) Except as provided in subparagraphs (b) and (c) below, on and after September 30, 1987, Koppers shall have eliminated all unpermitted point-source discharges from the plant, identified in Exhibit "A" hereto. Except as provided in subparagraphs (b) and (c) below, on and after September 30, 1987, all point-source discharges from the plant shall comply with NPDES Permit PA0001988.

(b) Built into the base of the retaining wall abutting the South Branch of Bear Creek are hydraulic relief openings which may intermittently discharge contaminated groundwater. There is also a discharge into the South Branch of Bear Creek from a sump which collects contaminated groundwater used to test the reverse osmosis treatment system (Outfall SW-6 on attached Exhibit "A"). On and after the date specified in Paragraph 4(b)(vi) below, such unpermitted point-source discharges shall be eliminated or shall be permitted to discharge only uncontaminated groundwater.

(c) There are five unpermitted point-source discharges from the plant septic system to the South Branch of Bear Creek (Outfalls SD-1, SD-2, SD-3, SD-4 and SD-5 on attached Exhibit "A"). By July 8, 1988 or one hundred twenty (120) days after the Bear Creek Sanitary Authority Sewage Treatment system becomes available to receive sewage from the plant, whichever is later, Koppers shall cease discharging from these unpermitted point sources. In the interim, Koppers shall conduct monthly sampling and analyses of each of these discharges in accordance with Paragraph 9.

3. Stormwater. As part of its program for achieving compliance with Paragraph 2, above, Koppers has designed and is constructing the system for the

segregation, collection and reuse of contaminated stormwater runoff referred to in the first two sentences of Paragraph S, above ("Stormwater System"). Koppers shall comply with the following obligations concerning the Stormwater System:

(a) Not later than September 30, 1987, Koppers shall have completed construction of the Stormwater System. On and after September 30, 1987, Koppers shall discharge no stormwater from the plant to any waters of the Commonwealth except in accordance with the terms of NPDES Permit PA0001988. On and after September 30, 1987, Koppers shall discharge no stormwater from the plant to any water of the Commonwealth unless the discharge is authorized by NPDES Permit PA0001988.

(b) Not later than October 31, 1987, Koppers shall submit to PaDER's Bureau of Water Quality Management at 1012 Water Street, Meadville, PA 16335 ("BWQM Office") and to counsel for the Sierra Club and the ARC any appropriate amendments to Koppers' PPC Plan for the plant, to account for the Stormwater System, as installed.

(c) On April 14, 1987 and May 8, 1987, Koppers submitted to the BWQM Office and to counsel for the Sierra Club and the ARC an application for further amendments to NPDES Permit PA0001988 needed to account for the Stormwater System.

(d) As part of the Stormwater System, Koppers is installing a system denominated the "first flush" system which will collect for reuse in the plant contaminated stormwater from certain areas of the plant property. Stormwater not collected by the "first flush" system for plant reuse is to be discharged and will be discharged in accordance with NPDES Permit PA0001988. As soon as Koppers has installed the Stormwater System, Koppers shall commence the "first

flush" evaluation program described in Exhibit "B" hereto. Not later than thirty (30) days after completing this "first flush" evaluation program, Koppers shall submit to the BWQM Office and to counsel for the Sierra Club and the ARC a detailed written report describing the results of this "first flush" evaluation program, including any recommendations for modifications of the "first flush" system and a proposed schedule to implement such modifications. Until this report has been submitted, Koppers shall include in the sampling reports required by Paragraph 9, below, summaries of all data collected as part of the "first flush" evaluation program.

4. Groundwater collection and treatment system - In an effort to ameliorate the groundwater contamination problem described in Paragraphs G, H and I, above, Koppers shall design and construct a system for the collection and treatment of contaminated groundwater in the vicinity of the plant, in accordance with the following schedule:

(a) Preliminary submittals

(i) At a February 4, 1987 meeting between Koppers and PaDER, Koppers' consultant Geraghty and Miller made a recommendation that groundwater be collected through a french drain system. Koppers' consultants provided PaDER with a map showing a tentative location of the french drain system and tentative data on the construction parameters.

(ii) On April 1, 1987, Koppers submitted to the BWQM Office and counsel for the Sierra Club and ARC a preliminary design report for the french drain collection system for their comments and recommendations.

b. Groundwater collection and treatment system

(i) Not later than December 1, 1987, Koppers shall submit to the BWQM Office and counsel for the Sierra Club and the ARC its detailed plan for the design and construction of a system to collect and treat contaminated groundwater in the vicinity of the plant ("Groundwater Plan"). The Groundwater Plan shall include a detailed description of the facilities Koppers has installed and proposes to install for the purposes of collecting, confining the spread of, treating, and discharging groundwater. The Groundwater Plan shall also contain a properly completed application for a Part II Water Quality Permit authorizing the construction and operation of facilities for treatment prior to discharge of groundwater ("Groundwater Treatment Part II Permit"). The Groundwater Plan shall clearly explain the design basis of the proposed groundwater collection and treatment facilities and shall show that any discharge will comply with NPDES Permit PA0001988. The Groundwater Plan shall include appropriate amendments to the PPC Plan for the plant, reflecting the proposed groundwater collection and conveyance system. Upon approval by PaDER, the Groundwater Plan shall be incorporated into, and become an obligation of, this Consent Order and Agreement.

(ii) Not later than two months after PaDER approves the Groundwater Plan or May 1, 1988, whichever is later, Koppers shall commence construction of the groundwater collection and confinement facilities specified in the approved Groundwater Plan.

(iii) Not later than four months after PaDER issues the Groundwater Treatment Part II Permit or October 1, 1988, whichever is later,

Koppers shall commence construction of the treatment facilities covered by that permit.

(iv) Not later than eighteen months after PaDER approves the Groundwater Plan or September 1, 1989, whichever is later, Koppers shall complete construction of the groundwater collection and confinement facilities specified in the approved Groundwater Plan.

(v) Not later than fourteen months after PaDER issues the Groundwater Treatment Part II Permit or August 1, 1989, whichever is later, Koppers shall complete construction of the treatment facilities covered by that permit.

(vi) On and after twenty-one months after PaDER issues the Groundwater Treatment Part II Permit or November 1, 1989, whichever is later, Koppers shall operate all facilities covered by the approved Groundwater Plan in accordance with the terms of the approved Groundwater Plan, the Groundwater Treatment Part II Permit and NPDES Permit PA0001988.

5. Koppers has an ongoing maintenance program for the repair of tanks, pumps, dikes, pipes and impermeable surfaces to prevent leaks or spills which may cause or lead to groundwater contamination. On August 21, 1986, PaDER approved Koppers' PPC Plan for the plant. Koppers shall comply with all provisions of its PPC Plan, including any revisions thereof required by this Consent Order and Agreement or as otherwise required by law, upon approval by PaDER.

6. By July 8, 1988 or one hundred twenty (120) days after the Bear Creek Sanitary Authority Sewage Treatment system becomes available to receive sewage from the plant, whichever is later, Koppers shall connect to the system and cease all discharges of sewage from the plant to the South Branch of Bear Creek.

Meanwhile, Koppers shall continue to pump out its septic tanks, haul the sewage to an authorized treatment plant and conduct monthly chemical testing of the septic tank contents, the results of which shall be submitted in accordance with Paragraph 9, to establish whether, and to what extent, chemical contaminants are entering the plant sewage system. As part of the Groundwater Plan submitted under Paragraph 4(b), Koppers shall propose measures to eliminate the entry of chemical contaminants into the plant sewage system by July 8, 1988.

7. In order to determine the extent of contamination both on and off the plant property, Koppers shall do the following:

(a) No later than June 5, 1987, Koppers shall submit the results of the spray-field study described in its October 13, 1986 submittal to the BWQM Office and counsel for the Sierra Club and ARC.

(b) On March 13, 1987 Koppers submitted to the BWQM Office and to counsel for the Sierra Club and ARC a proposal and schedule for further hydrogeologic study to be carried out by an outside consultant who is approved by the BWQM Office and counsel for the Sierra Club and ARC.

(i) The proposal for further hydrogeologic study included investigation of the unweathered or consolidated bedrock and any additional investigation of the shallow and bedrock aquifer necessary to define the vertical and horizontal extent of contamination in these aquifers. The study will include testing for, at least, the following: resorcinol, para-phenol sulfonic acid, meta-phenol sulfonic acid, phenol, benzene-meta-disulfonic acid, benzene sulfonic acid, trihydroxydiphenol, sulfate, sulfite, benzene, and formaldehyde. To the extent that prior studies have determined the extent of contamination in an area of the plant, they may be incorporated in this study.

(ii) Upon completion of the required field work, and in a timely manner, Koppers' consultant shall submit a report to the BWQM Office and counsel for the Sierra Club and ARC analyzing the data collected, which shall specifically include recommendations as to whether or not further hydrogeologic study is necessary to determine the vertical and horizontal extent of contamination in these or other aquifers. If PaDER determines further hydrogeologic study is necessary, Koppers agreed to carry out such work in a similar manner to that outlined above.

(iii) Koppers shall plan and undertake a project to identify and analyze for potential contamination (contingent upon owner approval), all wells and springs which serve as drinking water supplies in the vicinity of the plant's boundary. Koppers contacted all occupants of buildings, both public and private, within 1/4 of a mile of the entire circumference of the plant's boundary, in order to determine the source of drinking water for each building. Koppers requested permission, from the occupants of buildings which obtain their drinking water from a privately owned well or spring within 1/4 of a mile of the plant's boundary, to test the well or springs of any individuals in the test area who changed to the municipal water supply after January 1, 1985. Koppers tested all of the wells and springs of the Petrolia Municipal Water Supply, and results were submitted to the BWQM Office and counsel for the Sierra Club and ARC on February 13, 1987. All testing shall be done on a representative sample of the water, prior to treatment and according to generally accepted practices. Each water supply shall be tested for at least the following: resorcinol, para-phenol sulfonic acid, meta-phenol sulfonic acid, phenol, benzene-meta-disulfonic acid, benzene sulfonic acid, trihydroxydiphenol, sulfate, sulfite, benzene, and formaldehyde. A report describing the methodology,

extent and results of the study will be supplied to the BWQM Office and counsel for the Sierra Club and ARC by August 21, 1987.

(iv) A thorough search of the scientific literature through 1986 will be performed to identify the toxic, carcinogenic, teratogenic or mutagenic characteristics of the contaminants indicative of Koppers' Petrolia operations and a report describing the methodology and the results of the search, including a bibliography of all literature reviewed, shall be submitted to the BWQM Office and counsel for the Sierra Club and ARC by October 1, 1987.

8. All treatment facilities installed and all construction, maintenance and repair work done by Koppers or by others for Koppers at the plant shall be designed, built and operated in such a way as not to cause any new air, water or solid waste problems in violation of the Federal environmental statutes or the environmental statutes of Pennsylvania or the rules and regulations of PaDER.

9. (a) Koppers shall continue to sample monthly (i) its discharges as identified in Exhibit "A" hereto, until each discharge is eliminated or authorized by permit, at which time Koppers shall sample according to its permits (Koppers shall report in writing to counsel for the Sierra Club and ARC and PaDER any changes in the designation of any of the above listed discharges); (ii) the South Branch of Bear Creek upstream of the plant's influence; (iii) the South Branch of Bear Creek above the reclaimed lagoon; and (iv) the South Branch of Bear Creek downstream of the reclaimed lagoon. (Koppers shall report in writing to counsel for the Sierra Club and ARC and PaDER any changes in the designation of any of the above listed outfalls). Koppers shall also sample the contents of its septic tanks, as specified in Paragraph 6. Each sample shall be analyzed for the parameters shown on Exhibit "A" hereto, and the results submitted within twenty-

eight (28) days after the end of each month in which the sampling was conducted, to the BWQM Office and counsel for the Sierra Club and ARC. In addition, Koppers shall report to counsel for the Sierra Club and ARC and PaDER any other unauthorized discharge, spill, or bypass, including the date of discharge, the quantity and a chemical analysis. Copies of all DMRs and NCRs shall be sent to counsel for the Sierra Club and ARC as well as PaDER.

(b) If any party discovers any point-source discharge that is not listed in Exhibit "A", it shall promptly notify the other parties in writing. The parties shall then attempt to reach agreement upon an appropriate modification of this Consent Order and Agreement to account for any such point-source discharge. The preceding sentence shall not be construed to limit PaDER's authority to take enforcement action with respect to any such point-source discharge.

10. Commencing the tenth day of the month following the entry of this Consent Order and Agreement, and every other month thereafter until compliance is achieved with Paragraphs 2, 3, 4, 6 and 7, Koppers shall furnish to the BWQM Office and counsel for the Sierra Club and ARC written reports of the progress it has made in complying with Paragraphs 2, 3, 4, 6 and 7 of this Consent Order and Agreement. Koppers shall contemporaneously submit a copy of each such report to the Chief, Western Region, Office of Chief Counsel, 1303 Highland Building, 121 South Highland Avenue, Pittsburgh, PA 15206-3988.

11. All approvals or authorizations required by this Consent Order and Agreement to be given by PaDER shall be given only after consultation with counsel for the Sierra Club and ARC. PaDER agrees to supply counsel for the Sierra Club and ARC with copies of all letters, reports, permits, and the like produced by PaDER in response to submissions by Koppers.

12. Nothing herein contained shall be construed as precluding Koppers from discontinuing the operation of any source of water pollution which is the subject of this Consent Order and Agreement. Any such discontinuance shall, for its duration, have the effect of compliance with this Consent Order and Agreement. However, if Koppers does discontinue any source's operation it shall promptly notify PaDER and counsel for the Sierra Club and ARC in writing and shall not resume operation of that source, unless and until approved water pollution control equipment has been installed and made operational pursuant to a permit and the source is capable of meeting the effluent limitations set forth in the NPDES permit and regulations of PaDER.

AGREEMENT

13. In settlement of the violations alleged in Paragraphs D, E, F, G, H, J and K which have occurred on or before June 1, 1987 and subject to the reservation set out in Paragraph 18 below, Koppers shall:

(a) Within ten (10) days of the date of execution of this Consent Order and Agreement, pay into the Clean Water Fund a civil penalty of three hundred sixty thousand dollars (\$360,000.00), plus any amounts owed under Paragraph 13(b), below, by means of a check made payable to the "Commonwealth of Pennsylvania" for the Clean Water Fund and delivered to William McCarthy, Regional Monitoring and Compliance Manager, or his designated successor, at the BWQM Office.

(b) Commencing June 1, 1987, and by the fifth day of each month thereafter, submit a civil penalty in the amount of \$7,500 payable to the "Commonwealth of Pennsylvania" for the Clean Water Fund and submitted to William McCarthy, Regional Monitoring and Compliance Manager, or his designated successor, at the BWQM Office, with copies to counsel for the Sierra Club. Once

Koppers completes installation of the Stormwater System pursuant to Paragraph 3, above, this monthly penalty amount shall be reduced to \$3,500. These payments shall be made monthly up to and including the date on which Koppers fully complies with Paragraphs 3 and 4 of this Consent Order and Agreement.

14. If Koppers fails to comply with any of the obligations in Paragraphs 2, 3, 4, 6, 7, 9 or 10 of this Consent Order and Agreement in a timely manner, Koppers shall pay stipulated penalties according to the following schedule:

(a) During the first sixty (60) days subsequent to the dates set forth in each of those paragraphs, Koppers shall pay \$200.00 per day for each day or part thereof that it fails to comply with each of those paragraphs. The sum shall be paid by a check made payable to the "Commonwealth of Pennsylvania" for the Clean Water Fund, and delivered to William McCarthy, Regional Monitoring and Compliance Manager, or his designated successor, within two (2) days after the end of each week (7 days) for which it becomes due and owing;

(b) Koppers shall pay \$400.00 per day for each day or part thereof that it fails to comply with each of said paragraphs after the initial sixty (60) days period set forth in subparagraph (a) above. Payments shall continue until compliance with the applicable paragraph has been attained. The sum shall be paid by check made payable to the "Commonwealth of Pennsylvania" for the Clean Water Fund, and delivered to William McCarthy, Regional Monitoring and Compliance Manager, or his designated successor, within two (2) days after the end of each week (7 days) for which it becomes due and owing.

(c) Upon request by Koppers, PaDER may, in its sole discretion, waive or reduce any amounts otherwise payable under Paragraphs 14(a) or 14(b), above. Should Koppers request any such waiver or reduction, it shall provide PaDER and

counsel for the Sierra Club and ARC with a detailed written statement of the reasons therefor.

15. For a period of one year after Koppers completes construction of the Stormwater System referred to in Paragraph 3, above, Koppers shall pay penalties for all discharges not authorized by the NPDES permit, including unpermitted discharges, except for the discharges referenced in Paragraphs 2(b) and 2(c), according to the following schedule:

(a) For each day during the first six months, \$250.00 per day of violations, except that if the violation involves a discharge of a heavy metal or an organic compound (Al, As, Cr, Cu, Fe, Ni, Zn, phenol, toluene, Cr^{-6} , unionized hydrogen sulfide and benzene), \$500.00 per day; and

(b) For each day during the second six months, \$500.00 per day of violation except that if the violation involves a heavy metal or an organic compound (as defined above), \$1,000.00 per day.

16. At the time any payment is made under Paragraph 13, 14 or 15, above, proof thereof (such as a photocopy of the check and cover letter) shall be sent to the Chief, Western Region, Office of Chief Counsel, 1303 Highland Building, 121 South Highland Avenue, Pittsburgh, PA 15206-3988 and to counsel for the Sierra Club and the ARC.

17. Any penalty payments received under Paragraph 14 or 15 of this Consent Order and Agreement shall not limit or affect the right of PaDER, the Sierra Club or the ARC to take any other action, civil, criminal or administrative, to enforce the Clean Streams Law, the Federal Clean Water Act, any regulations adopted pursuant to those laws, or the terms of this Consent Order and Agreement.

18. The Sierra Club, the ARC and PaDER expressly reserve the right assert any appropriate claims arising from, and to seek any appropriate remedy for, any groundwater contamination discovered in the bedrock aquifer or outside the boundaries of the Koppers plant. All parties expressly reserve any rights they might have under the laws or Constitutions of both the United States and the Commonwealth of Pennsylvania, except as those rights are limited by this Consent Order and Agreement.

19. All parties to this Consent Order and Agreement agree to give fair consideration to the opinions of the consultants referred to in Paragraph L in reaching agreement on the details of the work to be done by Koppers and the scheduling thereof. Koppers shall provide contemporaneous copies of all correspondence to and from its consultants concerning the scope, substance or performance of the consultants' work to the BWQM Office and counsel for the Sierra Club and ARC.

20. Koppers shall comply with any new or more stringent self-executing regulation (i.e., a regulation which is not meant to be applied through incorporation in a permit) promulgated by the Pennsylvania Environmental Quality Board or the federal government subsequent to the execution of this Consent Order and Agreement which is applicable to any provision of this Consent Order and Agreement, and such regulation shall supersede any less stringent regulation referred to in this Consent Order and Agreement.

21. This Consent Order and Agreement shall expire (i) one year from the date of Koppers' compliance with its NPDES permit, (ii) at such time as Koppers has fulfilled all its responsibilities under this Consent Order and Agreement, or (iii) December 31, 1989, whichever comes last, unless the parties agree in writing to extend this Consent Order and Agreement.

22. Should Koppers intend to transfer any legal or equitable interest in the plant or in any part thereof, Koppers shall, at least thirty (30) days prior to the contemplated transfer, serve a copy of this Consent Order and Agreement upon the prospective successor or assignee in interest, and simultaneously notify PaDER and counsel for the Sierra Club and ARC. This Consent Order and Agreement shall remain in full force and effect as between PaDER, the Sierra Club, the ARC and any assignee or successor in interest of Koppers.

23. In the event that PaDER determines that Koppers' failure to comply with any date in any schedule set forth in Paragraphs 2 through 4 is due to riot, civil disorder, acts of God, weather so severe as to impede construction, work slowdown or stoppage, strike, unavailability of materials or labor, any delay or defaults of third parties under contract with Koppers with respect to the obligations undertaken hereunder, or any other cause beyond the control of Koppers, which Koppers is unable to prevent despite due diligence, PaDER will grant a reasonable extension of time for compliance to compensate for the unavoidable delay. In order for Koppers to take advantage of this paragraph, Koppers shall notify PaDER and counsel for the Sierra Club and ARC in writing within seven (7) days of the date of the event causing the delay. Notification shall be made to PaDER's Regional Water Quality Manager at the BWQM Office and shall include all relevant documentation, such as copies of third-party correspondence, and a notarized affidavit from a responsible official of Koppers specifying the length and causes of delay and Koppers' efforts to perform its obligation on time. Defaults or delays of third parties under contract with Koppers shall not be grounds for any extension unless such contracts include a provision reciting that "time is of the essence." Koppers' failure to comply with requirements of this paragraph specifically and in a timely fashion

shall render this paragraph null and void and of no effect as to the event which forms the basis for the request for the extensions. The total of all extensions pursuant to this paragraph, individually or in conjunction with previous extensions, shall not exceed one hundred eighty (180) days.

24. All plans and applications for permits filed pursuant to this Consent Order and Agreement shall be filed on forms provided by PaDER, shall conform to all requirements of the Clean Streams Law and the Federal Clean Water Act and all regulations adopted pursuant to those laws, and shall, as originally filed, be fully completed and acceptable to PaDER. In the event PaDER requires any modification or addition to any applications, Koppers shall provide the required modification or addition within a reasonable time specified in PaDER's notice.

25. Nothing set forth in this Consent Order and Agreement is intended nor shall be construed as authorizing any discharge to the surface or groundwaters of the Commonwealth either before or after the execution of this Consent Order and Agreement or as authorizing any violation of any permit or statute, law or regulation before or after that date.


26. Nothing set forth herein is intended nor shall be construed to relieve or limit Koppers' obligation to comply henceforth with the terms and conditions of any permit existing or hereafter issued to Koppers, nor to relieve or limit Koppers' obligations to comply with all federal laws and the laws of the Commonwealth, whether or not specifically referenced in this Consent Order and Agreement.

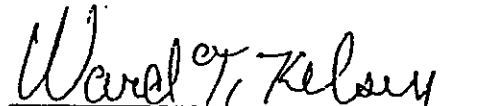
27. It is the intent of the parties that the clauses of this Consent Order and Agreement are severable, and should any part of this Consent Order and Agreement be declared by a court of law to be invalid and unenforceable, the other clauses shall remain in full force and effect.

28. The parties agree that prior drafts of this Consent Order and Agreement may not be used in any litigation involving the interpretation of this Consent Order and Agreement.

Consent Order and Agreement executed by the Commonwealth of Pennsylvania, Department of Environmental Resources, this 12th day of August 1987.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF ENVIRONMENTAL RESOURCES


Peter A. Yeager
Regional Water Quality Manager


Ward T. Kelsey
Assistant Counsel

Koppers Company, Inc. hereby consents to the terms and entry of this Consent Order and Agreement and hereby knowingly waives its right of appeal from this Consent Order and Agreement, which right is available under the Act of April 19, 1929, P.L. 177, as amended, 71 P.S. §510 et seq., and the Administrative Agency Law, 2 Pa.C.S. §103(a) and Chapters 5A and 7A. The undersigned hereby

covenant and agree that they are authorized to consent to the Consent Order and Agreement on behalf of Koppers Company, Inc..

FOR KOPPERS COMPANY, INC.

x Alonso W. Lawrence
Name:
Title: V.P. G.M., Chemical Systems

CORPORATE SEAL

Name:
Title:

APPROVED AS TO LEGALITY AND FORM:

Thomas R. Hays
Thomas R. Hays, Esquire
Attorney for Koppers Company, Inc.

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ESCROW AGREEMENT

Escrow Agreement dated as of the effective date (the "Effective Date") set forth on schedule 1 attached hereto ("Schedule 1") by and among Beazer East, Inc., a Delaware corporation ("Beazer"), the Commonwealth of Pennsylvania, Department of Environmental Protection, an agency of the Commonwealth of Pennsylvania (the "Department") and J.P.Morgan Trust Company, National Association, as escrow agent hereunder (the "Escrow Agent").

WHEREAS, Beazer and the Department have entered into a Consent Order and Agreement of even date herewith (the "Consent Order"), pursuant to which Beazer has, among other things, committed to deposit cash in an escrow account to be held and disbursed by the Escrow Agent pursuant to the terms of this Escrow Agreement. The effectiveness of the Consent Order is subject to the receipt by the Department of public comments thereon, the potential approval or withdrawal by the Department of its approval of the Consent Order based on such comments and the potential appeal by a third party of the Department's approval of the Consent Order; and

WHEREAS, Beazer and the Department have requested that the Escrow Agent, as escrow agent, hold and disburse the funds to be deposited by Beazer pursuant to this Escrow Agreement pending the effectiveness of the Consent Order, and the Escrow Agent has agreed to accept its appointment and to act as such pursuant to this Escrow Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth and with the intent to be legally bound hereby, the parties hereto agree as follows:

1. **Appointment.** Beazer and the Department hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.
2. **Escrow Fund.** Simultaneous with the execution and delivery of this Escrow Agreement, Beazer is depositing with the Escrow Agent the sum indicated as the escrow deposit on Schedule 1 (the "Escrow Deposit"). The Escrow Agent shall hold the Escrow Deposit and, subject to the terms and conditions hereof, shall invest and reinvest the Escrow Deposit and the proceeds thereof (the "Escrow Fund") as directed in Section 3.
3. **Investment of Escrow Fund.** During the term of this Escrow Agreement, the Escrow Fund shall be invested and reinvested by the Escrow Agent in the investment indicated on Schedule 1 or such other investments as shall be directed in writing by the Department and Beazer and as shall be acceptable to the Escrow Agent. All investment orders involving U.S. Treasury obligations, commercial paper and other direct investments will be executed through JPMorgan Fleming Asset Management (JPMFAM), in the investment management division of JPMorgan Chase. Subject to principles of best execution, transactions are effected on behalf of the Escrow Fund through broker-dealers selected by JPMFAM. In this regard, JPMFAM seeks to attain the best overall result for the Escrow Fund, taking into consideration quality of service and reliability. An agency fee will be assessed in connection with each transaction. Periodic statements will be provided to the Department and Beazer reflecting transactions executed on behalf of the Escrow Fund. The Department and Beazer will receive a statement of transaction details upon completion of any securities transaction in the Escrow Fund without any additional cost. The Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Escrow Agreement. The Escrow Agent shall have no liability for any loss sustained as a result of any investment in an investment indicated on Schedule 1 or any investment made pursuant to the instructions of the parties hereto or as a result of any liquidation of any investment prior to its maturity or for the failure of the parties to give the Escrow Agent instructions to invest or reinvest the Escrow Fund.
4. **Disposition and Termination.** The Escrow Agent shall disburse the Escrow Fund and the earnings thereon as follows:
 - (a) The Escrow Agent will disburse the Escrow Fund, together with the earnings thereon, less the fees and expenses of the Escrow Agent deducted therefrom as provided in this Escrow Agreement, to the Department promptly after the receipt by the Escrow Agent of a notice (the "Consent Order Effectiveness Notice"), signed by

both Beazer and the Department and in the form attached to this Escrow Agreement as Exhibit A, informing the Escrow Agent that the Department has issued a Statement of Decision that the Consent Order has become effective and that the period during which third parties may appeal the Consent Order has passed without any such appeal having been filed. Beazer shall have no discretion as to whether or not to join with the Department in delivering any such notice in the event that the Department shall have issued a Statement of Decision that the Consent Order has become effective and the period during which third parties may appeal the Consent Order shall have passed without any such appeal having been filed, and Beazer hereby agrees to deliver such notice within five (5) business days of the Department's request for the same in such event.

(b) The Escrow Agent will disburse the Escrow Fund, together with the earnings thereon, less the fees and expenses of the Escrow Agent deducted therefrom as provided in this Escrow Agreement, to Beazer promptly after the receipt by the Escrow Agent of a notice (the "Failure of Effectiveness Notice"), signed by both Beazer and the Department and in the form attached to this Escrow Agreement as Exhibit B, informing the Escrow Agent that the Consent Order has not become effective by reason of the Department's having issued a Statement of Decision withdrawing its approval of the Consent Order as a result of its review of public comments. The Department shall have no discretion as to whether or not to join with Beazer in delivering any such notice in the event that the Department shall have issued a Statement of Decision withdrawing its approval of the Consent Order, and the Department hereby agrees to deliver such notice within five (5) business days of Beazer's request for the same in such event.

(c) The Escrow Agent will disburse the Escrow Fund and the earnings thereon other than as provided in paragraphs (a) and (b) of this Section 4 only upon its receipt of instructions signed by both Beazer and the Department. Without limiting the generality of the foregoing, neither the Department nor Beazer shall have any right or authority to independently or individually direct the Escrow Agent to disburse the Escrow Fund in the event that a third party appeals the Department's issuing a notice that the Consent Order has become effective, and in the event any such appeal shall be filed, the Escrow Fund shall remain in escrow pursuant to this Escrow Agreement until such time as the appeal is finally determined and the time for any further appeal shall have expired. In the event that the appeal is ultimately dismissed and the time for any further appeal shall have expired, the Department and Beazer will jointly direct the Escrow Agent to disburse the Escrow Fund, together with the earnings thereon, less the fees and expenses of the Escrow Agent deducted therefrom as provided in this Escrow Agreement, to the Department. In the event that the appeal is ultimately upheld and the time for any further appeal shall have expired, the Department and Beazer will jointly direct the Escrow Agent to disburse the Escrow Fund, together with the earnings thereon, less the fees and expenses of the Escrow Agent deducted therefrom as provided in this Escrow Agreement, to Beazer.

Upon delivery of the Escrow Fund by the Escrow Agent, this Escrow Agreement shall terminate, subject to the provisions of Section 8.

5. **Escrow Agent.** The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Escrow Fund. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to the Department or Beazer. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through agents or attorneys (and shall be liable only for the careful selection of any such agent or attorney) and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Escrow Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other parties hereto or by a final order or judgment

of a court of competent jurisdiction. Anything in this Escrow Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

6. **Succession.** The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving 10 days advance notice in writing of such resignation to the other parties hereto specifying a date when such resignation shall take effect. Beazer and the Department may, by mutual consent, remove the Escrow Agent at any time, with or without cause, by an instrument signed by both of them and delivered to the Escrow Agent. In the event of any resignation or removal of the Escrow Agent, the resigning or removed Escrow Agent shall deliver the Escrow Fund to such successor Escrow Agent as shall have been appointed by Beazer and the Department, and thereupon the resigning or removed Escrow Agent shall stand fully relieved and discharged of any further duties hereunder. The Escrow Agent shall have the right to withhold an amount equal to any amount due and owing to the Escrow Agent, plus any costs and expenses the Escrow Agent shall reasonably believe may be incurred by the Escrow Agent in connection with the termination of the Escrow Agreement. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all the escrow business of the Escrow Agent's corporate trust line of business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

7. **Fees.** The Escrow Agent shall receive reasonable compensation for the services to be rendered hereunder, which unless otherwise agreed in writing shall be as described in Schedule 1 attached hereto. The Escrow Agent shall also be entitled to reimbursement, upon request, for all expenses, disbursements and advances, including reasonable attorney's fees and expenses, incurred or made by it in connection with the preparation, execution, performance, delivery, modification and termination of this Escrow Agreement. Such compensation and reimbursement shall be deducted from the proceeds generated by the investment of the Escrow Fund, and the Department and Beazer hereby authorize such deduction by the Escrow Agent.

8. **Indemnity.** Beazer shall indemnify, defend and save harmless the Escrow Agent and its directors, officers, agents and employees (the "indemnitees") from all loss, liability or expense (including the reasonable fees and expenses of in house or outside counsel) arising out of or in connection with (i) the Escrow Agent's execution and performance of this Escrow Agreement, except in the case of any indemnitee to the extent that such loss, liability or expense is due to the gross negligence or willful misconduct of such indemnitee, or (ii) its following any instructions or other directions from the Department or Beazer, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. The parties hereto acknowledge that the foregoing indemnities shall survive the resignation or removal of the Escrow Agent or the termination of this Escrow Agreement. The parties hereby grant the Escrow Agent a lien on, right of set-off against and security interest in the Escrow Fund for the payment of any claim for indemnification, compensation, expenses and amounts due hereunder.

9. **TINs.** The Department and Beazer each represent that its correct Taxpayer Identification Number ("TIN") assigned by the Internal Revenue Service ("IRS") or any other taxing authority is set forth on the signature page hereof. In addition, all interest or other income earned under the Escrow Agreement shall be paid to the party to whom the Escrow Fund is paid, absent in a joint written direction of the Department and Beazer to the contrary, and reported by the recipient to the Internal Revenue Service or any other taxing authority. Notwithstanding such written directions, Escrow Agent shall report and, as required withhold any taxes as it determines may be required by any law or regulation in effect at the time of the distribution. In the absence of timely direction, all proceeds of the Escrow Fund shall be retained in the Escrow Fund and reinvested from time to time by the Escrow Agent as provided in Section 3. In the event that any earnings remain undistributed at the end of any calendar year, Escrow Agent shall report to the Internal Revenue Service or such other authority such earnings as it deems appropriate or as required by any applicable law or regulation or, to the extent consistent therewith, as directed in writing by the Department and Beazer. In addition, Escrow Agent shall withhold any taxes it deems appropriate and shall remit such taxes to the appropriate authorities.

10. **Notices.** All communications hereunder shall be in writing and shall be deemed to be duly given and received:

- (i) upon delivery if delivered personally or upon confirmed transmittal if by facsimile;

- (ii) on the next Business Day (as hereinafter defined) if sent by overnight courier; or
- (iii) four (4) Business Days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address set forth on Schedule 1 or at such other address as any party hereto may have furnished to the other parties in writing by registered mail, return receipt requested.

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to (ii) and (iii) of this Section 10, such communications shall be deemed to have been given on the date received by the Escrow Agent. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate. "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth on Schedule 1 is authorized or required by law or executive order to remain closed.

11. **Security Procedures.** In the event funds transfer instructions are given (other than in writing at the time of execution of this Escrow Agreement, as indicated in Schedule 1 attached hereto), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on schedule 2 hereto ("Schedule 2"), and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent. If the Escrow Agent is unable to contact any of the authorized representatives identified in Schedule 2, the Escrow Agent is hereby authorized to seek confirmation of such instructions by telephone call-back to any one or more of your executive officers, ("Executive Officers"), which shall include the titles of _____, as the Escrow Agent may select. Such "Executive Officer" shall deliver to the Escrow Agent a fully executed Incumbency Certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. The Escrow Agent and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Department or Beazer to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Escrow Agent may apply any of the escrowed funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. The parties to this Escrow Agreement acknowledge that these security procedures are commercially reasonable.

12. **Miscellaneous.** The provisions of this Escrow Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto. Neither this Escrow Agreement nor any right or interest hereunder may be assigned in whole or in part by any party, except as provided in Section 6, without the prior consent of the other parties. This Escrow Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania. Each party hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts located in the Commonwealth of Pennsylvania. The parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Escrow Agreement. No party to this Escrow Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Escrow Agreement because of, acts of God, fire, floods, strikes, equipment or transmission failure, or other causes reasonably beyond its control. This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date set forth in Schedule 1.

Tax Certification: Taxpayer ID# <u>23 - 2632 825</u>			
Customer is a (check one)			
<input type="checkbox"/> Corporation	<input type="checkbox"/> Municipality	<input type="checkbox"/> Partnership	<input type="checkbox"/> Non-profit or Charitable Org
<input type="checkbox"/> Individual	<input type="checkbox"/> REMIC	<input type="checkbox"/> Trust	<input checked="" type="checkbox"/> Other <u>STATE</u>

Under the penalties of perjury, the undersigned certifies that

(1) the entity is organized under the laws of the United States

(2) the number shown above is its correct Taxpayer Identification Number (or it is waiting for a number to be issued to it), and

(3) it is not subject to backup withholding because (a) it is exempt from backup withholding or (b) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding

(If the entity is subject to backup withholding, cross out the words after the (3) above)

Investors who do not supply a tax identification number will be subject to backup withholding in accordance with IRS regulations

Note: The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: S. Craig Lobins

Name: S. CRAIG LOBINS

Title: Regional Manager

Tax Certification: Taxpayer ID# 25-0964665

Customer is a (check one)

☒ Corporation ☐ Municipality ☐ Partnership ☐ Non-profit or Charitable Org
☐ Individual ☐ REMIC ☐ Trust ☐ Other _____

Under the penalties of perjury, the undersigned certifies that

- (1) the entity is organized under the laws of the United States
(2) the number shown above is its correct Taxpayer Identification Number (or it is waiting for a number to be issued to it), and
(3) it is not subject to backup withholding because (a) it is exempt from backup withholding or (b) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding

(If the entity is subject to backup withholding, cross out the words after the (3) above)

Investors who do not supply a tax identification number will be subject to backup withholding in accordance with IRS regulations

Note: The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

BEAZER EAST, INC.

By: Robert S. Markwell

Name: Robert S. Markwell

Title: Vice President

J.P.MORGAN TRUST COMPANY, NATIONAL ASSOCIATION
as Escrow Agent

By: _____

Schedule 1

Effective Date: May 5, 2003

Party: Commonwealth of Pennsylvania, Department of Environmental Protection

Notice Address: 230 Chestnut Street, Meadville, PA 16335; Attn. Douglas Moorhead, Esq.

TIN: 23-2632825

Wiring Instructions: First Union National Bank; Account No. 2100019662887; Ref. 006490-035000-101

Party: Beazer East, Inc.

Notice Address: c/o Three Rivers Management, Inc., 1 Oxford Center, #3000, Pittsburgh, Pa 15219,

Attn. Karen Nance

TIN: 25-0904665

Wiring Instructions:

Escrow Deposit: Eighteen Million One Hundred Eighteen Thousand Eight Hundred Thirteen Dollars
(\$18,118,813.00)

Investment: [specify]

- ☒ JPMorgan Chase Bank Money Market Account;
- ☐ A trust account with J.P.Morgan Trust Company, National Association;
- ☐ A money market mutual fund, including without limitation the JPMorgan Fund or any other mutual fund for which the Escrow Agent or any affiliate of the Escrow Agent serves as investment manager, administrator, shareholder servicing agent and/or custodian or subcustodian, notwithstanding that (i) the Escrow Agent or an affiliate of the Escrow Agent receives fees from such funds for services rendered, (ii) the Escrow Agent charges and collects fees for services rendered pursuant to this Escrow Agreement, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Escrow Agreement may at times duplicate those provided to such funds by the Escrow Agent or its affiliates.

Fund

Escrow Agent notice address: J.P.Morgan Trust Company, National Association
Institutional Trust Services
One Oxford Centre, Suite 1100
301 Grant Street
Pittsburgh, PA 15210
Attention: Jo Anne Osborn
Fax No.: 412-291-2070

Escrow Agent's compensation: Annual Administration Fee: \$1,300

Out-of-Pocket Expenses: 6% of the amount of the Annual Administration Fee (i.e. \$78)

Schedule 2

**Telephone Number(s) for Call-Backs and
Person(s) Designated to Confirm Funds Transfer Instructions**

If to the Department:

	<u>Name</u>	<u>Telephone Number</u>
1.	<u>Craig Lobins</u>	<u>814-332-6613</u>
2.	<u>Mark Gorman</u>	<u>814-332-6072</u>
3.	<u>Douglas Moorhead</u>	<u>814-332-6070</u>

If to Beazer:

	<u>Name</u>	<u>Telephone Number</u>
1.	<u>Robert Markwell</u>	<u>412-208-8812</u>
2.	<u>Jill Blundon</u>	<u>412-208-8831</u>
3.	<u>Karen Mance</u>	<u>412-208-8819</u>

Telephone call-backs shall be made to each of the Department and Beazer if joint instructions are required pursuant to this Escrow Agreement.

EXHIBIT A

CONSENT ORDER EFFECTIVENESS NOTICE

[Date]

J.P. Morgan Trust Company, National Association
Institutional Trust Services
One Oxford Centre, Suite 1100
301 Grant Street
Pittsburgh, PA 15210
Attn: Jo Anne Osborn
Fax No.: 412-291-2070

Re: Escrow Agreement Effective _____, 2003

Dear Ms. Osborn:

This notice is delivered pursuant to the terms of that certain Escrow Agreement (the "Escrow Agreement") effective _____, 2003 by and among Beazer East, Inc. ("Beazer"), the Commonwealth of Pennsylvania Department of Environmental Protection (the "Department") and J.P. Morgan Trust Company, National Association, as Escrow Agent. Capitalized terms used in this notice and not otherwise defined herein have the respective meanings ascribed to them in the Escrow Agreement.

Beazer and the Department hereby notify the Escrow Agent that the Consent Order has become effective and that the time for filing third party appeals has terminated. The Escrow Agent is hereby authorized and directed to deliver the Escrow Fund, together with the earnings thereon, to the Department, by wire transfer as provided on Schedule 1 to the Escrow Agreement.

BEAZER EAST, INC.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT B

FAILURE OF EFFECTIVENESS NOTICE

[Date]

J.P. Morgan Trust Company, National Association
Institutional Trust Services
One Oxford Centre, Suite 1100
301 Grant Street
Pittsburgh, PA 15210
Attn: Jo Anne Osborn
Fax No.: 412-291-2070

Re: Escrow Agreement Effective _____, 2003

Dear Ms. Osborn:

This notice is delivered pursuant to the terms of that certain Escrow Agreement (the "Escrow Agreement") effective _____, 2003 by and among Beazer East, Inc. ("Beazer"), the Commonwealth of Pennsylvania Department of Environmental Protection (the "Department") and J.P. Morgan Trust Company, National Association, as Escrow Agent. Capitalized terms used in this notice and not otherwise defined herein have the respective meanings ascribed to them in the Escrow Agreement.

Beazer and the Department hereby notify the Escrow Agent that the Department has issued a Statement of Decision withdrawing its consent to the Consent Order after review of public comments. The Escrow Agent is hereby authorized and directed to deliver the Escrow Fund, together with the earnings thereon, to Beazer, by wire transfer as provided on Schedule 1 to the Escrow Agreement.

BEAZER EAST, INC.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____